

The Politics of Political Accountability in Hong Kong

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Abstract:

This research thesis is prompted by the introduction of the Principal Officials Accountability System (POAS), a move which is probably aimed to solve the governance crisis and salvage the sagging popularity of the government. While political accountability is an under-explored academic issue which deserves more attention in the academic community of Hong Kong, the POAS also fundamentally alters the constitutional and political context of Hong Kong and directly put the issue of political accountability to the forefront. The researcher is also particularly amazed by the interesting observation that the government officials and the general public seemingly articulated two contrasting version of accountability. Based on these observations, this thesis aims to investigate the new constitutional and political context after the implementation of the POAS.

The failure of the POAS in enhancing both the accountability and capacity of the government is exemplified by the constitutional as well as political appraisal in this thesis. The institutional analysis demonstrates that the POAS is deficient in forging a strong accountability relationship between the executive and the general public.

Besides the traditional institutional analysis, the major contribution of this thesis is to enrich the academic discourse of the politics of accountability in Hong Kong by additional perspectives. First, by employing the tools of historical institutionalism and social constructivism, this paper attempts to craft a better theoretical framework in explaining the vicissitudes of Hong Kong politics associated with the POAS reforms. It illustrates that the POAS transformed the political interaction related to political accountability from an intra-elite struggle to a societal clash between the

pro-government coalition and pro-democracy camp. Therefore, apart from the inability to deliver accountability, the POAS also ended up bringing ceaseless conflicts to the already polarized political dynamics in Hong Kong.

Second, this thesis tries to supplement the study of politics of political accountability by adopting an unprecedented political-actor-oriented approach. By conducting a series of interviews with political elites who are mostly involved in the POAS reform, the researcher hopes to trace the root of the deficiency of the POAS and the entailing politics in their conception towards the concept of accountability. After carefully analyzing the materials obtained from these interviews, it is discovered that though these elites appreciate the importance of political accountability, there is a huge mismatch between what they aspire and their proposal to materialize their aspirations. The failure of the accountability system can find its vestiges in the conception of accountability exhibited by these elites.

論文撮要

政府在年前推行高官問責制，相信是希望透過建構新行政制度，以解決政府管治危機及提升政府民望。政治問責在香港是一個少被探索的學術題目，但是其重要性卻絕對不應被忽略。高官問責制根本地改變了香港的憲政框架及政治互動，亦提高了大眾對政治問責這個學術議題的關注。而在新制度建構過程中，負責推行變革的政府官員對政治問責的看法，好像與市民的期望迥然不同，這對本文的作者而言，亦是一個有趣且重要的探討議題。基於以上種種，本文嘗試從多角度探究高官問責制的實施對香港的憲法框架與政治生態的影響。

若以憲法與政治角度評估，我們看到高官問責制既未能確保政治官員向市民問責，亦不能提升政府管治效能。透過制度分析，本文的結論是高官問責制未能在政府與市民之間建立強而有力的政治問責關係。

除了傳統的制度分析，本文的最大學術貢獻相信是豐富了本地對政治問責的學術論述。首先，透過利用歷史制度理論及社會建構理論的分析工具，本文嘗試建立更好的分析框架，以解釋問責制推行後香港所出現的政治不穩。此論文認為，高官問責制的政治意義，是使原本只停留在政治精英之間對誰人該主導政府施政的爭端，提升至政府與社會之間對問責概念的角力，並透過親政府聯盟與民主派的對立得以展現。因此，問責制除不能確保問責，更為香港帶來延綿不休的政治爭拗。

其次，本文希望再透過以政治人物為本的分析方法，嘗試補充香港就政治問責過度側重制度分析的論述。透過與一眾與問責制推行最相關的官員及政治人物進行訪問，本文嘗試溯本清源，建構香港政治精英對政治問責的看法，並從中尋找問

責制設計及帶來的政治互動的蹤跡。仔細分析訪談內容後，本文發現儘管這批精英對政治問責均見抱負，他們所提出的落實問責的制度框架卻難以達致其推崇的問責性。而眾多問責制的流弊與及後的政治互動模式，亦可以從精英們的想法中尋找根源。

Chapter 1 Politics of Political Accountability in Hong Kong – The Research Puzzle and Questions

1.1 Research Puzzle: Different Conception of “Political Accountability”?

The notion of political accountability originates largely from the contemporary democratic thoughts, and it is widely depicted as the indispensable quality of good governance. The government derives power from the citizens, and the executive authority must be accountable for the exercising of such power to the citizens. Scrutinizing public policies and decisions on behalf of citizens, a popularly-elected legislature is regarded as the main enforcer of political accountability in a representative democracy.

However, such Utopian vision has never been materialized in Hong Kong after the handover. Political accountability seems to be deliberately neglected by the Government, and the problem was excavated by a series of unprecedented crises in public administration during the first term of Tung Chee-hwa as the Chief Executive (the CE). A series of mismanagement and intolerable mistakes were revealed. No

matter how serious the blunders were, the public found it unable to remove principal officials whom the public no longer confided in. This led to the public outcry for enhancement of political accountability in governance.

In the Policy Address 2000, Tung stated that he would consider devising a comprehensive system of public accountability, which would include a compatible system of appointment for principal officials, a clear statement of their powers and responsibilities as well as a clear definition of their role in formulating and implementing government policies.

After a rather long period of deliberation and then hasty preparation, the government implemented the Principal Official Accountability System (POAS) in July 2002. However, as this thesis will go on elaborate, the new accountability system was discredited by a concatenation of blunders and scandals, including Penny Stock Fiasco, controversy of Article 23 legislation, Antony Leung's car purchasing scandal, and the indecisiveness in tackling with SARS in its first year of execution. The defects of the POAS are so glaring that "political accountability" is just reduced to mere rhetoric. The system just cannot fulfill the public aspiration for government accountability.

Besides the inability to solve the governance crisis, the officials concerned seemed to espouse a different conception of "political accountability" held by the

general public. The situation has stroke me suddenly, thanks to two articles in local press on the same day. On that single page of Opinion columns, the Secretary for Constitutional Affairs Stephen Lam Sui-lung argues that the new accountability system operates smoothly and effectively, while another columnist Andy Ho opines that the new system fails to deliver political accountability (South China Morning Post, 12 October 2002).

Indeed, during this year, in rare case newspaper commentaries have unanimously condemned this political reform as a failure. The public has long demonstrated their disapproval of the new system also, as evidenced in major opinion surveys in Hong Kong. Nonetheless, the government officials still remained defiant and continuously avowed for the merits of this reform.

The stark contrast between the government's response and public sentiment leads to an unresolved puzzle: Why do the CE and the principal officials remain affirmative of the merits of the POAS, albeit the disapproval from the general public? Are the CE and principal officials holding a conception of "political accountability" different from the public? If so, what is it?

After briefly explored the relevant literature, to my surprise, I discover that indeed no serious empirical study has ever been done on the evolution of political

accountability in Hong Kong, let alone its possible relevance to the post-colonial political context after the Handover.

This research is exactly initiated by this desideratum.

1.2 Research Questions and Design:

This research thesis attempts to answer three core research questions:

- 1. What is the institutional problem that leads to the malfunction of the POAS?**
- 2. What is the political dynamics that contributed to the failure of the POAS?**
- 3. What is the conception of “political accountability” held by the political elites who are mostly involved in the POAS reform?**

The first question is a static institutional analysis on the POAS. The second one attempts to recapture the dynamic aspect of the politics of political accountability as made manifest after the introduction of the POAS. The last questions deconstruct the elements of “political accountability” as embodied in the minds of key political actors in this reform, and tries to link it with the operation of the POAS in Hong Kong. These intellectual enquires, as a combination, would lead to the discussion why the introduction of the POAS and the new interaction between political actors would

bring further political destabilization of the regime instead of stabilization in Hong Kong.

This research is thus descriptive, explanatory and exploratory. It is exploratory because it may discover interesting findings which may undergird the more ambitious explanatory research: how should political scientists establish the theoretical framework in explaining the phenomenon of political instability exhibited in nearly every aspect in the post-colonial politics of Hong Kong.

The empirical foundation of this study mainly comes from two sources. The first main stream is government documents, official records and newspaper reports. They would be used frequently in the discussion of the first two research questions.

The empirical materials for the third questions mainly come from a host of qualitative interviews with some elites conducted between January and May 2004. This part is aimed at eliciting the rich and unique context of political accountability held by the elites, and concepts or ideas would be duly grounded in the data.

It should be noted that it is not the researcher's intention to attribute the failure of accountability wholly to institutional issues. Indeed, the researcher acknowledges the possibility of leadership problem and personal factors that may be of relevance to the discussion. However, given the limited resource and time, the leadership issue will not be covered in this thesis.

Despite the limited scope allowed for negotiation among political parties, nearly every political reform (including the POAS) is primarily a product of executive initiative devoid of extensive input from the legislature and public. It is reasonable to presume that the context of political accountability is mainly driven by elites in Government instead of citizens. Thus, it is sensible to limit the targets among political figures who had been deeply involved in the POAS reform. More detailed discussion on the methodology could be found in Chapter 7.

1.3 Significance of the Study:

Despite these various limitations, it is believed that the research can develop a more appropriate and tailor-made conceptual framework to understand the operation of political accountability, an important concept in both political science and public administration, in Hong Kong. Besides the available institutional analysis of the existing political system, this research can provide a new political-actor-oriented perspective for studying how the beliefs of the politically influential actors bear any relevance to the evolution of political concepts and the political development pertaining to it.

By providing a meaningful discourse on the operation of “political accountability” in Hong Kong, this particular study may shed some lights on future research on this under-explored topic. For instance, if the perception of political accountability held by the general public is extracted, we may compare that with this study. If the citizens’ expectation is different from the Government’s understanding, it may provide the clues why the legitimacy of the HKSAR Government has no sign of resurgence. Another possible development is to study the discreteness in Hong Kong political culture and values with that of the colonial rule. The evolution of political accountability may be itself a discontinuity, in which certain important governing values in colonial era again are not inherited after the resumption of sovereignty.

On the other hand, the unique situation in Hong Kong may also offer some insight to modify the contemporary studies on political accountability, which is dominated by democratic theories.

Chapter 2 The Concept of Accountability

– the Normative and Theoretical Issues

2.1 Accountability - Ideals and Actualities

The following two chapters form the literature review of this thesis. They serve as a comprehensive overview on the ongoing academic discourse on the topic of accountability.

At the outset, we must acknowledge that the academic discussions on the concept of accountability are indeed consisted of wide-ranging elements. Such intellectual inquiry span across the field of political philosophy, democratic studies, political institution as well as public administration, and these different ramifications are also closely intertwined.

The concept of accountability can both refer to an ideal and an attainable actuality - the actual organizational arrangement which aims to materialize the ideal. The dual nature of the word often creates confusion and complexity for normal readers to comprehend the real connection between these two attributes. The problem becomes more apparent if we want to judge if an actual political system falls short of the ideal. We need to be extremely conversant with the indispensable part of the ideal of accountability, and then devise indicators which can be applied to access the

existing political structures and institutions. By this way, the intellectual exploration must move from the normative theory to institutional analysis. Therefore, any meaningful theoretical overview of the concept of accountability must be a combination of both normative and empirical perspectives. These two factors together necessitate a wide-ranging and voluminous discussion in the literature review of this thesis.

Moreover, accountability is a rather new concept in the discourse of Hong Kong politics. Insufficient effort has been made to elucidate this intricate concept and apply the insight from existing literature to study the politics of accountability in Hong Kong. Therefore, Chapter 2 and 3 will devote extensive coverage to illustrate the theoretical and organizational issues arising from the concept of accountability, so that the latter discussion of this thesis can be grounded on some substantial intellectual foundation.

In his famous book *Democracy and its Critics* and *On Democracy*, Robert Dahl has competently delineated “democracy” into a normative ideal and the empirical modalities. He situates democratic theory in a horizontal scale and put the arguments about democracy in different places in the scale, with the left extreme explicitly philosophical and the right explicitly empirical (Dahl 1989, 7).

It is submitted that similar demarcation is also applicable to the concept of accountability. This thesis intends to adopt similar differentiation in illustrating the normative and organization components of “political accountability”. Chapter 2 will tackle the theoretical issues arising from this concept, while Chapter 3 touches on some structural and organizational issues.

2.2 Why Political Accountability? – the Ideal of Rendering Account

2.2.1 The need of limited government

Rules and compliance form an important pedestal of politics. In discussing the efficacy of a political system, we have already assumed the propriety of a government to execute collective actions, and preclude the possibility of anarchy or other anarchical vocation. Government rules and citizens obey. The governing and the governed are thus engaged in a relationship through the political framework. Put it bluntly, in analyzing the relationship between the government and citizens, we are indeed ascertaining in what manner the government policies and decisions bind and how citizens are bound.

Political philosophers have long avowed for the necessity of a government or a certain kind of political domination. To illustrate how this thought is derived would entail the volume of another research thesis. For the sake of completeness, however, several important points should be brought out briefly.

In his classical work *Leviathan*, Thomas Hobbes vividly illustrates the insecurity, brutality and chaos accompanied with the lack of a central sovereign power, or “state of nature”. Human instincts induce individuals to act self-interestedly. Without any structure of institutionalized authority, people tend to exploit or enslave others to maximize their own advantages. Surrendering our freedom to an overwhelming political authority is indubitably an uncomfortable experience. However, the horizontal kinds of exploitations and manipulations among people are so even more abhorrent that render the vertical subjection to a government the best among the worse. To Hobbes, human beings are either subject to an absolutism (the state, symbolized by the chimerical “Leviathan”), which is dangerous, or cooped up in the state of anarchy, which is even worse (Hobbes, 1651).

The descents of social contract theory have presented a more optimistic picture. Instead of adopting Hobbes’s assertion that absolutism is inevitable, John Locke presents a more encouraging portrait of government. Largely influenced by the traditions of natural law, Locke claims that the purpose of the government should only

be limited to protecting individual rights, property and security. Since the government possesses every means to violate citizens' fundamental rights, the public should be provided with ways to guard against infringement from the government. This partly led to the aspiration of constitutional and representative government (Locke 1690), and in later incarnation, separation of power espoused by Baron de Montesquieu (1748).

The nineteenth century marked the rise of capitalism and democracy, while communism found its heyday in the earlier twentieth century subsequently. Old regimes fell and new regime emerged. However, some form of government continues to exist in every territory. One thing is obvious: besides anarchy, which has been marginalized in today's political discourses, socialism, which has never come into true existence, as well as fundamentalism, which still gains meager support worldwide, major ramifications of political philosophy and theory in the last century (such as liberalism, pluralism, elitism, communism, communitarianism) are all built on one common postulation – the need of a government. There seems to be a broad and conventional consensus on the need and desirability of subjection to political authority.

If we admit the propriety of a government to rule us, the next logical question is how the government should exercise their political power. No matter how divergent

existing political ideologies are, they both share a common vision - the sovereignty of the state rests with the people. Government merely serves as the agent. Their power to govern is entrusted by the citizens, the ultimate principals. This view draws its major theoretical underpinning from the doctrine of popular sovereignty and popular will by Rousseau (1762).

In order to govern, government officials must be bestowed with wide-ranging power to rule. The government is entrusted with sweeping power to raise tax, deploy human and financial resources of the public vehicles, as well as enact and enforce authoritative rules for the society. In case of disobedience, the government may resort to coercive power and sanctions to demand obedience. In necessary occasions, the government may obtrude into one's privacy and daily life, under the reason (or excuse) of "collective interest". In Weber's parlance, government enjoys "*the monopoly of the legitimate use of physical force*" (1991).

Having weathered incalculable disaster brought from authoritarian, despotism as well as Fascism, the world has learned a simple lesson from history though – concentration of political power is extremely dangerous. The public is particularly vulnerable under the shadow of government's wide-ranging power. We do not need Lord Acton to remind us that "*power tends to corrupt and absolute power corrupt absolutely*" (Acton, 1842).

As we have seen, the quandary of subjecting to political authority lies in the difficulty to confer the government extensive power while keep it from going too wild. James Madison, founder of the American Constitution, has concisely highlighted such dilemma,

“if men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” (Madison, *Federalist* no. 51)

This classical thought has contributed significantly to the later discussion on accountability. Empowerment must come in tandem with responsibility and control. Once a government is entrusted to govern, certain control measures and mechanism must be tagged to political power. In short, “limited government” (Friedrich 1974) is what we want always.

In order to attain a limited government, we need to devise certain controlling mechanisms for preventing the abuse of power. First, the mechanism should be able to tight the rein on the use of political power. The rulers are estopped from willfully manipulating political power to serve its course at the expense of others. The

mechanism should be able to prevent rulers from inflicting harm on the general public by exercising their political power. Moreover, government officials may also misuse their power for pursuing a lesser evil. Lethargy, indolence, or recklessness is all devoid of execrable elements. However, if they are not mediated or cured in the political system, their outcome may be equally catastrophic.

Second, the citizens should be, to some extent, capable of impose their will on the government in the capacity of its principals. Besides limiting political power, government must be forced to govern responsibly and responsively, hence acting in the best interest of the citizens.

Therefore, in order to achieve a kind of desirable mode of government, what we need is a type of relationship between the government and citizens that can, on one hand, prevent the government from inflicting harm by its overwhelming resource as well as monopoly of power, and, on the other hand, induce the public officials to do good to the people.

Given this two-fold ambition, the next crucial question is thus, “how can we achieve this goal?” Here, I find it appropriate to turn from traditional political philosophy to recent discussion on accountability and representation.

2.2.2 Concept of Accountability – A kind of Political Control

We can bridle political power through various kinds of control on the government. Accountability, which emphasizes on the need to render account, is only a specific kind of political shackles.

In conventional parlance, accountability means answerability. In short, a person is accountable if he has to “give account to some authority for the discharge of one’s duty or for one’s action” (Jones 1992) and “to be responsible for their consequence” (Burke 1986).

2.2.3 Rendering Account – Information, Reasons and Sanctions

If public officials are merely delegates or puppets of the public, the will of the ruler and the ruled are virtually the same. Then it would be pointless to discuss accountability. Accountability presupposes relational and dialogic relationship between the citizens, in the capacity of principals, and the government, in its role as public agent. An agent first acquires the capacity to act on behalf of their principal, but he needs to be responsible to the principals.

The essence of accountability lies in the duty to provide accounts and answer questions on how the political power is exercised. Schedler divides accountability into

several dimensions. The *informational dimension* of accountability impose public officials a duty to inform about their decisions and put forward reliable facts about their administration. It stipulates, on one hand, the citizens' right to receive information about the governance, and on the other hand, government's obligation to release all necessary details. The *argumentative dimension* implies the government's duty to justify the manner by which political power is manipulated. Therefore, besides "the right to receive information and the corresponding obligation to release all necessary details", accountability also includes "the right to receive an explanation and the corresponding duty to justify one's conduct". (Schedler 1999, 15)

In normal circumstances, answerability operates retrospectively. The officials are open to questions and criticism for what they have done in the past. But such answerability may operate prospectively also. Citizens are entitled to inquire what the government plans to do in the future, so that some wrongful or imprudent acts can be noticed at the outset.

However, the obligation to provide information and reason is only the necessary but not sufficient condition to render a government accountable. Answerability alone can only guarantee transparency of the government. To institutionalize the proper norm of representation and responsiveness among public officials, answerability must

be supported by enforceable sanctions, by which the citizens can employ institutional means to penalize officials' improper conducts or violation of public duties.

In order to materialize accountability, there should be at least some guaranteed channel for citizens to punish public officials for their wrong and unsatisfactory performance. The public formulates their judgment and imposes sanction on officials accordingly basing on the account presented by the latter. Punitive instruments can be normally available to the citizens, with their actual forms depending on particular institutional designs. The typical examples of sanction in a liberal democracy include electoral sanctions, impeachment, and legislative vote of no confidence. This forms the "accountability mechanism", which is, according to Manin, Przeworski and Stokes, "a map from the outcomes of actions (including messages that explain these actions) of public officials to sanctions by citizens" (1999, 10). This credible potential threat, in turn, reminds the officials the need to exercise their political power properly and responsively.

However, in what circumstance should the public officials be punished? To what standard should they comply with? Mark Philp approaches this enquiry by demarcating accountability into two categories: formal and political. Formal accountability "*aims to ensure that the public official acts within the formal remit of the responsibilities of his/her office*". It concerns whether political power is abused (in

case of corruption, embezzlement, fraud, etc) and whether procedural propriety is observed (in case of *ultra vires* or violation of procedural justice). This is to ensure that the trust of public office is exercised within the law. Yet, obviously, formal accountability does not tackle with problems such as indolence, lethargy, insouciance, as well as stupid use of political power, which are difficult to be specified in formal terms. (Philp 2001, 360)

On the other hand, political accountability “*concerns the answerability of the politicians and public officials for their conduct in office. The issue is not whether someone acted within their legitimate powers, but whether they exercised those powers in ways that the political bodies to whom they are accountable – such as Parliament or the electorate – can endorse*” (Philp 2001, 360). It focuses on whether the politicians have adhered to the standard widely endorsed by the community. Thus, even a particular official has complied with every available rule and procedural stipulation, he may still be punished by the mass for his decision that infringes the standard or values commonly shared by the public. Put in another way, formal accountability subjects the officials to rule of law, while political accountability exposes them to both the rule of law and rule of reason. This thesis will mainly deal with the latter species of accountability.

2.3 Representation and Accountable Government: a Comparative Approach

In order to have a better grasp of the conceptual issues pertaining to the concept of “accountability”, I find it judicious to further compare accountability with the concept of responsibility, responsiveness and mandate-responsiveness.

Adopting the most commonly used definition, “representation” means acting in the best interest of the public (Pitkin 1967). From a conceptual perspective, there are indeed several ways we may strive for a representative government. Accountability is only one of them – government is selected through elections, but the incumbents are subject to regular elections and legislative oversight. Once citizens elect a government, though they are free to discuss and criticize in any time, they are not empowered to give binding instruction to the government. Its distinctive features are the *logic of retrospective voting* which connects policy outcomes with sanctions.

Indeed, policy processes can exist in various modes, many of them do not rest upon retrospective assessment, electoral sanctions, or even democracy. Since the citizens subject themselves to the authority of the government, they can reasonably expect the public officials to act in their best interest, i.e. “representative”. If whether a government act in the best interest of its citizens is used as the ultimate yardsticks to evaluate the performance of a regime, the important questions would be like this:

given the variety of choices, which particular mode of political control would induce the government officials who are coupled with political power to be representative?

In their illuminating discussion on representation, Manin, Przeworski and Stokes compare the concept of accountability, responsiveness and responsibility. Largely originated from a functional approach, they have simplified a policy formulation process as several parts: input, output (policies) as well as outcome. Figure 2 shows a simplified simulation of policy process that illustrates the connection between these components and provides us the basis for comprehensive analysis.

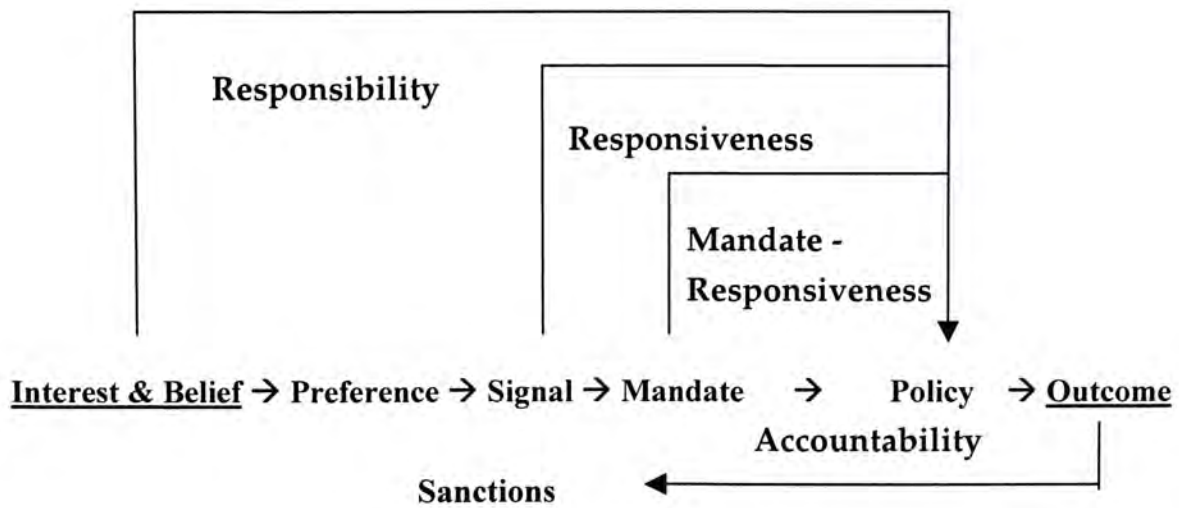


Figure 2 Simplified Policy Process¹

Every citizen holds his individual set of *values*, by which he perceives, appraises or evaluates the government performance as well as outcomes of the policies pursued.

¹ A modified version of Figure 1.1, in Przeworski A., Stokes S. C. and Manin B.(Ed.), *Democracy, Accountability, and Representation* (Cambridge, U.K.; New York: Cambridge University Press, 1999), 1-26, 9.

People develop their *beliefs* about what outcome would be brought by a particular policy. Also, different groups possess their *interest* orientation in a society. These elements, as a whole, generate particular *preferences* towards public policies. Citizens would likely prefer the government to adopt policies which can advance their interests, adhere to their entrenched values, and is sensible in their belief.

These preferences are *signaled* or articulated to the politicians through a variety of means. Among these signals, *mandate* is the specific type being put forward in elections. It contains the political manifesto and proposed policies of candidates. Citizens vote and elect the candidates by choosing which mandate they prefer. After successfully elected, the incumbents adopt policies in their political capacity and these policies, eventually, bring intended or unintended outcomes.

By this model, we can differentiate four types of government: *responsible*, *responsive*, *mandate-responsive* and *accountable*.

A government is *responsible* if the leaders pursue agendas which they think would be in the best interest of the citizens. The policy directions of a responsible government may coincide with the preference of the citizens. However, in case there is conflict between the two, a responsible political leader would be prepared to resist electoral pressures, and, inevitably in some occasions, risk unpopularity by pursuing policies formulated to meet the long-term public interests in his conception (Heywood

2002, 318). Undoubtedly, in deciding which courses the government should pursue, public officials will and have to think differently from the public. They need to take into account various factors, for example, ensuing financial burden, social solidarity and security implication, which would transcend narrow and particularistic concern. Policy preference expressed by the community may not necessarily coincide with that of the public officials. A responsible political leader believes that he/she is in the best vantage point in determining what is best for the public. The government should implement policies that are most beneficial to its citizens despite widespread opposition, and be prepared to withstand public criticism. On the other hand, if the citizens are rational, they should realize their limitation in deciding what policies are the best for them. They should, thus, remain deferent to political authority and follow the course of the government. The idea of responsible government shares the rhetoric of elitism, and resembles monarchy and aristocracy proposed by Aristotle (1968) to a certain extent.

A *responsive* government adopts only policies that are signaled as citizens' preferences. Responsiveness predicates that people's preference are articulated and communicated to the government. The typical signals include public opinion polls, public demonstrations, letter campaigns and other forms of political expression.

A *mandate-responsive* government is similar to a responsive one. The public gives their signals by voting for particular platforms during an election, in the hope that the elected officials will follow their preferences and adopt the policies accordingly in the future. Election thus performs a prospective mission – to put a government that would implement platform people prefer in power in the coming electoral term.

A government is *accountable* when citizens “can discern representative from unrepresentative governments and can sanction them appropriately, retaining in office those incumbents who perform well and ousting from office those who do not.” (Manin, Przeworski and Stokes 1999, 10). In other expression, citizens hold a government accountable if they can evaluate the performance of the incumbents and sanction them accordingly through available accountability mechanism. Accountability mechanism is “*a map from the outcomes of the actions of public officials to sanctions by citizens*” (10). Normally, elections serves as the most important accountability machinery, through which termination of tenure – the ultimate sanction in a career in politics - can be exercised. Accountability rests upon the logic of retrospective assessment instead of prospective empowerment.

2.4 The Desirability of Accountability – the Tactful Balance

As we have discussed in earlier part, the normative basis of imposing rigorous control on the government rests upon the notion of popular sovereignty. If the government is placed with far-reaching power to infringe upon personal rights and freedom, the citizens should be, in other way around, empowered to have a say in what is decided on behalf of them. Individuals and organizations which can manipulate the government vehicle must be checked and controlled to a certain extent. Nonetheless, the perplexing question is, to what extent is public control appropriate?

Popular political participation is essential in imposing effective control on the government. Those who have a legitimate stake in the government should always be provided with channels to express their concern and prevent the government's discretion from going unfettered. Only by actively articulating their preference or participating in the policy formulation process could citizens' preference duly reflected in government's decisions.

If every single citizen is involved in the policy deliberation process and endowed with the right to impose their will on the government, the public officials are left with no discretion to depart from what is commonly endorsed by the society. Ideally speaking, this kind of full public participation can ensure that preference of every person is duly reflected during the policy process, i.e. complete responsiveness.

We can find the reference from ancient Greece, which laid down the prototypical model of direct democracy. Public participation fosters democracy, while full public participation bespeaks direct democracy. Direct democracy is the purest form of democracy in the sense that every citizens participate equally in the reaching public decision. In classical Athenian democracy, citizens (though only limited to adult male over 20) actively participated in public affairs. Besides casting their votes, adults participated in politics through debate and deliberation on public policies in assembly. Each citizen had the opportunities to serve in important posts of the government on a rotational basis (Held 1996) and they might sanction individuals in the administration or executive for fault or imprudence (Elster 1999).

However, direct democracy remains a utopian vision. Such extensive direct political participation necessitates a relatively low population. Small-scale political systems became incapable to cater the needs of booming population, expanding territorial area of a regime and the increasingly diversified and complicated functions of government. Direct and equal participation at all levels of government become increasingly untenable. Robert Dahl lively illustrates the impossibility of direct democracy further by means of simple arithmetic. In a large state with considerable people, if each citizen speaks few minutes before making any public decisions, the decision would take up few days. That lead to his conclusion of “the law of time and

numbers” – “the more citizens a democratic unit contains, the less that citizens can participate directly in government decisions and the more that they must delegate authority to others.” (Dahl 1998, 109)

Even if we assume the utopian direct democracy can materialize, its realization may indeed bring several setbacks. First, it may deepen the existing cleavage and rifts among different groups of people. Modern society is never homogenous in nature. Since the capitalistic economic order is introduced and entrenched, people are readily stratified according to their financial status (Hayek 1960). Ethnic division within a state becomes a global phenomenon in the last decade, and would likely exacerbate in the future (Huntington 1996). A modicum of citizens’ participation can hold citizens together, but excessively assertive public participation may deepen the rifts between different interest groups, social classes as well as ethnic communities. This lead Mansbridge to laments, the more intense public participation is, the deeper would the cleft between competing interest groups be. The higher the level of participation is, more hostile, acrimonious and antagonistic politics is likely to become. (Mansbridge 1983)

Second, a surfeit of political participation may virtually paralyze the government. If government officials are obliged to listen to every citizen’s claim and opinion, the administration may be easily “overloaded” by this unbearable burden. Plamenatz

remarks, *“rulers, even democratic rulers, need to be protected from their subjects, and citizens even in a democracy need to be able to shut their doors and their ears to one another.”* (Plamenatz 1976, 185). Dunn further adds, *“paralyzing rule is not a recipe for ensuring that it has a surplus of desired over undesired consequences.”* (Dunn 1999)

In both theory and reality, a pure form of direct democracy may not be what we want. Even Jean-Jacques Rousseau has to admit the naiveté in assuming the practicality of direct popular participation at all levels (Rousseau 1994, 245-6). System of representation, which is acclaimed by James Stuart Mill as “the grand discovery of modern times” (Mill 1937), becomes the most viable and dominant form of political system in the world nowadays.

System of representation emphasizes the division of labour between the public and professional politicians. The public chooses particular politicians as their representative, and the politicians will govern and determine public issues on behalf of the citizens.

Here, we need to ponder another important question: then, how should these representatives regard public opinion? Are they merely delegates (who should be completely responsive to the views of their principals) or a trustee (who can deviate

from public opinion)? Here, we will have to review the classic debate on the trustee-delegate dichotomy.

If we regards public officials as merely delegates of the public, the government should be wholly responsive to the public and implement what citizens prefer punctiliously. Therefore, they should be devoid of any discretion to make any decision that is against the will of the public. A government is virtually a pollster, whose only duty is to detect citizens' sentiments and implement relevant policies that suit their preference.

Though respect for public opinion is desirable and important, formulating public policies solely with regard to public opinion is completely different and may result in many drawbacks. First, there are many limitations for the citizens to make prudent public choices. The informational asymmetry between the general public and the government officials is a perennial phenomenon in politics. It is impossible for the public to be wholly certain about what is going on in the government. There is certain information that is just outside the reach of normal citizens. It would also be too difficult as well as costly for citizens, who are normally deprived of sufficient resource and manpower, to find them. The information left in the grip of the public may thus be just superficial, biased and incomplete to render any sensible judgment on the real state of affairs.

Moreover, rational theorists have long reminded us the human disposition to act only according to their self-interest. People are normally myopic. They incline to pursue their short-term gain instead of appreciate that possible greater gain can be obtained if they opt to suffer temporary detriment instead. By following strictly the public preference, sometimes the long-term collective gains are sacrificed. Furthermore, public opinion is capricious and unpredictable. Public sentiments vacillate all the time. What the citizens prefer at this moment could be drastically different in near future. Responsiveness in governance, in most of the time, is equivalent to fluctuation in policy.

Schumpeter also admonishes any citizens' attempt to instruct the government. He believes that the task of governing itself is difficult and requires certain specialized political skills and intellectual abilities. Only politicians who have been properly trained and equipped with relevant skills should shoulder such responsibility. Thus, after a government is elected, *“(t)he voters outside of parliament must respect the division of labour between themselves and the politicians they elect. They must not withdraw confidence too easily between elections and they must understand that, once they have elected in individuals, political action is his business and not theirs. That means that they must refrain from instructing him about what he is to do”* (Schumpeter 1950, 295). Such rational deference to elites' decision – Schumpeter

terms it as “democratic self-control” – is an essential condition for the success of the democratic process. It is because only by such self-control could political leaders free from excessive interference from the public.

The lack of discretionary space may also discourage politicians to pursue political career. Politicians seek power to materialize their political ideology and vision. Dunn reminds us that they would need discretionary space by which they can be able to act, and sometimes to act boldly. Ridding public officials the necessary discretion in governance would effectively baffle professional politicians, as well as deter the fledging newcomers to assume public office (Dunn 1999). Though Rousseau espouses the importance of being vigilant to government’s action, at the same time he urges the citizens to provide sufficient discretionary space in which public officials can really act (Rousseau 1946).

Therefore, as Barnard admirably appreciates, public participation should never intend to stop the government from acting boldly. *“Participation must not stop them from being able to act one way or another within a given discretionary space. Otherwise, governments have nothing to be accountable for, and citizens nothing to watch”*. The rationale of political participation, as he claims, *“is not that everybody should have a hand in everything, but that there should be institutionally guarded opportunities for raising questions and exercising control”*. The criteria to gauge the

appropriateness of political control are whether the system can render the government “subject to control without being at the same time powerless to act on their own initiatives” (Barnard 2001, 142).

This discretionary space was termed as “distance” by Barnard. Public political participation forms the cornerstone of controlled government. However, mechanism that poses excessive control on the ruler is often turned to paralyzing shackles. Thus, the most desirable form of control on government is the utmost public vigilance *in combination with distance*. Government officials should be somewhat insulated from the public pressure, so that they can enjoy a discretionary space to act, and in many cases, act contrary to public opinion.

Similar concern is echoed in the work of Almond and Verba. They think that the maintenance of a proper balance between governmental power and governmental responsiveness is one of the most important and difficult tasks of a democracy” (1989, 341). Therefore, they propose that a mixture of subjective and participant attitude, i.e. civic culture, as the most desirable political culture for a stable democracy. Citizens should be both “*active, yet passive; involved, yet not too involved; influential, yet deferential*” (343). In short, what we need is **a tactful balance between citizens’ control and political leaders’ autonomy to act.**

Uhr concisely elucidates the differences between checks and empowerment by employing the terms “accountability” and “responsibility” - *“Accountability constrains and fetters official discretion, while responsibility releases discretion. Accountability is about compliance with authority, whereas responsibility is about empowerment and independence. Accountability is the negative end of the same band in which responsibility is at the positive end. If accountability is about minimizing misgovernment, responsibility is about maximizing good government.”* (Uhr 1993, 4)

Of course, we are not proposing here that political leaders should be cocooned in the available prerogative and insulated completely from public criticism. However, the essence of accountability is that the check on political power should be restricted to a reasonable ambit by which the politicians can actually rule. Along this vein, the comparative advantage of accountability kicks in. Accountability can thus be perceived as a delicate balance between public participation and the government’s capacity to act. And this balance forms the quintessence of the concept of political accountability as a normative ideal.

2.5 The Limitation of Accountability – Informational Barrier

Accountability is attractive because of its wide operation (ranging from information, justification to sanction) as well as its modesty, by which political leaders are left with sufficient rooms to do what is truly best for the public. However, if we consider accountability as a means to foster a representative government, it suffers from a major limitation.

In a world of perfect information, citizens would know perfectly what political leaders intend to do and the reasons behind. Therefore, it will be senseless to talk about accountability. In reality, however, we understand that complete transparency on the part of the government is just impossible. Therefore, as Schedler argues, any discussion on accountability has already presupposed the opacity of power and imperfect information. Since we cannot dig into politicians' head to fathom what they are thinking, we ask for their justification instead. As we cannot prophetically predict the outcome of every decision, we render retrospective rather than prospective assessment (Schedler 1999, 20). Agents of accountability do not intend to supervise everything. They want appropriate explanations when necessary only.

However, accountability engenders a peculiar principal-agent relationship. Though the citizens should always be the ultimate principals, ironically, it is the agents who decide to which extent would the principals know about their actions. As Stokes forcefully contends, citizens can only judge the propriety of a public decision

on the basis of what they are enabled to know (Stoke 1999). It is difficult for the public to overcome to perpetual problem of informational asymmetry in modern politics. Politicians have a plethora of ways to eschew public scrutiny on grounds of privilege, confidentiality or even legitimate realms of secrecy. Moreover, it may be desirable or even necessary for a government to conceal certain information in many occasions, such as intelligence about national defence and details of on-going international negotiations. It is equally difficult for citizens to demand specific disclosure, because, in a rather comical expression, they just do not know what they do not know. Therefore, indeed the public often lacks necessary information to know which area they should dig into, let alone to make sound judgments on public decisions and impose sanctions on the true culprits. We may have to accept this as the necessary price of accountability. However, if the amount of truth placed behind the veil is so vast that precludes the public from making any sound judgment, the wholly irrational response by the public (though citizens are not aware of the imprudence) can be equally disastrous.

The above discussion has set up the main contours of the on-going normative and theoretical discussion on the concept of accountability. Following this vein, we turn to the empirical component – how aspiration of accountability is actualized through institutional mechanism and practice.

Chapter 3 The Concept of Accountability – the Organizational Issues

3.1 Structural Components of Accountability

No matter how grand and admirable the gospels of accountability we have preached, there must be suitable and tailor-made implementation machineries to actualize those utopian aspirations. By this way, we turn to the discussion of the organizational arrangements and structural issues of accountability.

As mentioned before, the concept of accountability has been largely tinted with democracy and democratic ideals. David Potter, a prominent scholar on democratization, has once classified liberal democracy, authoritarians and partial democracy in terms of how accountable a regime is. In his definition, liberal democracy means “a type of political regime in which binding rules and policy decisions are made not by the entire community but by representatives *accountable* to the community.” This accountability is secured through competitive and democratic elections. Authoritarianism, on the other hand, is characterized by “state leaders who direct and regulate society *without being accountable to citizens*”. There is no competitive election as well as freedom of speech, association and opposing existing

regime. Partial democracy is “*a mixed type of political regime in which the accountability of government to citizens is more or less qualified*”. Non-elected establishments are in the position to restrict the effect of elections, and mediate the authority (Potter 1997, 4-5).

Younis and Mostafa advocate for a conception in which accountability is an indispensable ingredient of democracy. They clearly point out that election, an important component of democracy, only confers the power to run the country’s affair on particular persons. Democracy continues “*with the enduring obligation of the elected to give a satisfactory explanation and justification of their conduct*”, i.e. accountability (2000, 3). Thus, democratic society depends on accountability and transparent governance.

The contemporary academic discussion on accountability ultimate correlates accountability with democracy. However, Chebal (1986) warns us the potential danger of such approach. In a rather unconventional approach, he argues that accountability mechanism should not be equated with democratic institutions. If we adopt the concept of accountability in the broadest sense (i.e. provide explanation for the exercise of delegated power and the prospect of being sanctioned according to the will of the principals), accountability can exist in many other relationships, the most extreme cases being corporatism, cronyism or even nepotism. Similarly, Chebal

disagrees with the approach to equate political accountability with liberal democracy, which largely depends on the threat of revocation of public mandate as executed by regular competitive elections. According to him, accountability may exist between “*patrons and clients, ethnic leaders and their kin, party bosses and party members, bureaucrats and citizens, employers and employees, mullahs and believers, military and civilians*” (12). In short, accountability is embodied in the relation between state and civil society (12). It is not necessarily achieved by constitutional and institutional framework. Any study of accountability thus needs to transcend the confines of political systems and be grounded in the broader social fabric of the society. In his book, he provides strong evidential support by discovering that political accountability in developing countries can be obtained through other forms of representation in which formal multi-party elections are just peripheral – an indirect refutation of Potter’s conception of accountability.

Munichi also have to admit, at pain, that democratic accountability can be hampered by the existence of feudalistic connections with outside groups or people. These kinds of informal and extra-organizational linkages may undermine the efficacy of the democratic institutions in securing accountability (Munichi 1988, quoted in Younis and Mostafa 2000).

Once the fact that accountability is not monopolized by democracy becomes clear, the logical conclusion is that we must duly **differentiate democratic accountability from accountability.**

It is submitted that the most important criteria for distinguishing the two are competently raised by Smith. He defines democratic accountability as the ideology that stipulate the government to be accountable not to a ruler, monarch or particular class, but **to the people who are sovereign**, and the prime source of power. The core difference between democratic accountability and other accountability relationship is that in the former system, there is institutionalization of accountability within the liberal democratic order built on procedural propriety, impartiality, and formal regulation, in place with the more ad hoc kind of accountability relationship.

It is found that the major coverage of academic discussion on accountability has been imparted to democratic accountability. Therefore, it is unavoidable and indeed necessary to illustrate the relevant issues in this body of literature in detail here.

3.2 The Formal Organizational Components of Democratic Accountability

Before delving into more detailed discussion, we must have a firmer grasp of the major difficulties, as noticed by studies on developed and developing countries, in the institutionalization of democratic accountability.

Democratic accountability is one of the desirable features of government and governance. Putting this ideal into reality necessitates the inception of strong and sturdy political institutions. Douglass North, a prominent political scientist, lays down the definition of institutions as “the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction” (1990, 3). If we accept North’s proposition that institutions is a structure of incentive and sanctions that governs and determines human interaction, and also recognize its applicability in political arena, then the most puzzling and important for democratic theorist is, in Larry Diamond’s phrases, how to institute an appropriate incentive and sanction structure, so that the political leaders would be willing to give account, perform properly, and to be rewarded by upholding public accountability to the citizens. On the other hand, we need to ask how can we establish pertinent sanctioning mechanism to pose a credible threat to the government for want of abuse of political power and creating detriment to the citizens’ interests? (Diamond 1999)

A large amount of academic discussion has been made on the possible impediments to install this specific rule of game. The main difficulties, according to

various developmental theorists can be summed up into two threads – first, the reluctance for the incumbent governments to subject themselves to self-restraints, and second, the proclivity of politicians to withheld information from the mass.

The first difficulty is vividly illustrated by Schedler (1999b). Since the government legitimately monopolizes the coercive power, it possesses the necessary means and resource at its disposal to curb any development towards the direction of accountability. Unless it is imposed externally or fought for by internal violent opposition, the peaceful installation of accountability mechanism must rely on the willingness of government officials to subject themselves to self-restraint. Put in other way, the prospects of such depend on “whether governments benefit from the institutionalization of political accountability” (334). The institutions of accountability will inevitably limit the freedom of actions of the political leaders, while formal methods are established for the public to raise harsh questions and drag the political leaders into embarrassing situations. It is obvious that accountability mechanisms bring no short-term benefit at all. It is understandable that government officials are therefore disinclined to succumb to accountability.

The second hindrance emanates from the informational asymmetry between the government and the citizens. In order to make accountability work, Ghartey argues that the public must gain access to government information, so that the citizens can

know and judge the actions of the government. “to exercise their civic right and duties of participations in the political process” (1987, 48). Nonetheless, the hardship is that, as mentioned in previous chapter, the government has every measure to determine what the citizens are enabled to know. Without “a regime of freedom of information” (Dunn 1999, 339), furtive and covert actions by the government could be left outside the realm of public surveillance. Thus, John Dunn subsequently points out that, “the main weight of democratic accountability has to fall here: on the attempt to maximize the degree to which politically consequential conduct by rulers and their subordinates is always in the open.” (1999, 339)

3.3 Vertical and Horizontal Accountability

The concepts of *vertical* and *horizontal* accountability are first coined by scholars such as Sklar (1987) and O’Donnell (1994). According to Schedler, “horizontal accountability” refers to “a relationship between equals”, i.e. how the state institutions are empowered to check abuses by other agencies and branches of government which shares roughly equal power (1999a, 23). The traditional doctrine of checks and balances, through compartmentalizing government into executive, legislative and judiciary, can be regarded as the archetypal arrangement of horizontal

accountability. Of course, other formal institutions such as Ombudsman and Audit Committee may be included in this category also.

It contrasts with “vertical accountability”, which emphasizes the “relationship between unequals” – “it refers to some powerful “superior” actor holding some less powerful “inferior” actor accountable” (Schedler 1999a, 23). The concept does not postulate any direction of the flow of accountability. It may operate in a top-down or bottom-up manner. In a democratic regime, the study of vertical accountability focuses on how the public, mass media and civil associations impose and enforce their expectation on the government. The most important means to exercise vertical accountability is through fair and periodic democratic elections.

Democratic theorists go on arguing that vertical and horizontal accountability rest upon each other. They are mutually dependent, and each cannot survive alone without the support of the other. Schacter, a policy researcher, points out that multi-party election by universal suffrage is only a necessary but not sufficient condition for democratic accountability to become sturdy. Vertical accountability can only be effective if the government is also willing to create and sustain independent public institutions or organizations (i.e. agents of horizontal accountability) to oversee its action. (Schacter 2001) Whether the government would pay heed to the public largely depends on the vigour and extent of these institutionalized surveillance.

The other way round, horizontal accountability must be buttressed by strong vertical accountability. (Schacter 2001) The public officials will only pay attention to the oversight of horizontal accountability agents if they will be duly punished by the citizens for failing to do so. Put in another way, the civil society must be equipped with necessary means to post a credible threat (such as electoral punishment) to deter the government from staying outside the purview of horizontal accountability.

However, the complementary nature of vertical and horizontal accountability can be exhibited in highly restrictive conditions. Schedler points out three necessary conditions for vertical and horizontal accountability to operate in tandem. First, voters must adopt a mentality of retrospective instead of prospective voting. They should cast their votes according mostly to their evaluation of the institutional issues instead of policy issues, partisan labels as well as personal charismatic appeals. Second, the incumbent party must be neither too dominant to bear no risk of electoral defeat, nor too pivotal that it can only act a peripheral role in the political setting. Finally, public officials must be in a position to anticipate voters' potential assessments. They must believe the ability of voters to pose a credible threat. Of course, the voters must be also capable and willing to vote down unaccountable governments by the ballots. (1999b, 334-335)

3.4 Typology of Accountability

If we bear in mind the broad conceptualization between vertical and horizontal accountability, we are provided with a useful yardsticks to classify the different kinds of accountability mechanism in democratic governments all around the world. They vary in nature, their entailing procedures, political actors involved, the standard of accountability, and the most importantly, the ultimate sanctions imposed. However, all of them exhibit the interweaving of horizontal and vertical accountability, which thus create a robust network to hold political power in checks.

In the following part, we will try to summarize the main typology of accountability under a democratic system and the mechanisms that are devised to materialize them.

3.4.1 Classical dichotomy of political and administrative accountability

Before moving into the discussion of typology of accountability mechanisms, we should have a clear grasp of the classical dichotomy between political and administrative accountability first.

An accountable government in liberal democracies works in this way: political executives of a government are elected by universal suffrage. They are politically accountable to the public in a sense that they must be responsive to public opinions and preferences. The revocability of the mandate during each periodic election serves as the ultimate sanctions on the incumbents. A group of politically neutral administrators are subsumed under the leadership of these political executives. They are accountable to the political appointees only, and should only devote their diligence in implementing the policies formulated by politicians with efficiency and meritocracy. In short, bureaucrats owe administrative accountability to political executives, who are in turn politically accountable to the public.

Such division of accountability between politicians and bureaucrats can be found in both parliamentary and presidential democratic political systems. Accountability under parliamentary supremacy can be epitomized by Dicey's articulation on accountability, which enunciates that ministers should be externally accountable to the Parliament while civil servants should be internally accountable to their political chiefs. Electoral mandates supported by impartiality and anonymity of the civil service are the cornerstone of parliamentary accountability. (Dicey 1959)

The operation of accountability in a presidential system can be best summarized by Redford's expression of "overhead democracy" - "[D]emocratic control should

run through a single line from the representatives of the people to all those who exercised power in the name of the government. The line ran from the people to their representatives in the Presidency and the Congress, and from there to the President as chief executive, then to departments, then to bureaus, then to lesser units, and so on to the fingertips of administration” (Redford 1969, 70-71).

The availability of legislative process and judicial process further holds public officials legally accountable. Political executives are constantly subject to legislative oversight. Political leaders have duties to explain their conduct before the legislature and to answer the questions, including the harsh, critical and unfriendly ones put forward by legislative counsellors. These legislative counselors are in turn accountable to citizens to the extent dependent on particular electoral arrangements. The legislature is also given limited sanctioning capacity. Legislature often possesses power to remove ministers whom the public no longer confides in. Courts or administrative tribunals are empowered to probe public servants who are alleged to breach existing laws or regulations and see their accounts.

The following figure shows a simplified model of accountability of a democratic representative government.

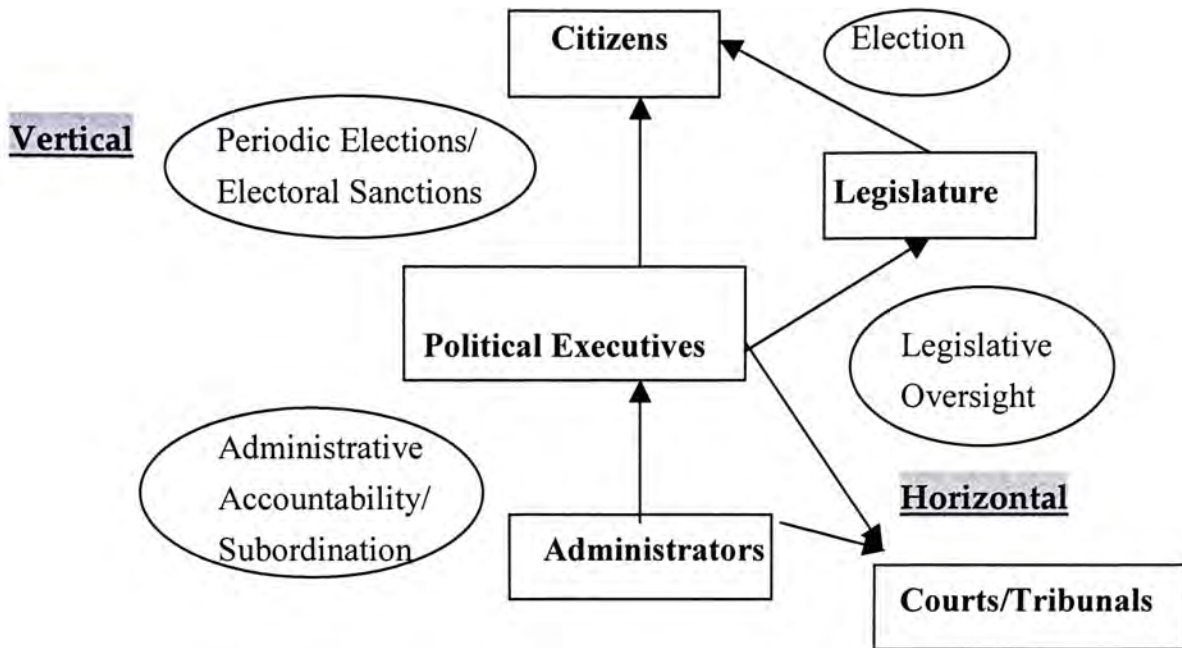


Figure 1 Model of Accountability of a Liberal Democracy

3.4.2 Political Accountability – Vertical Accountability

Agents

Jabbara and Dwivedi approach the concept of political accountability from a constitutional perspective. They assert that the political leadership has a constitutional duty to give account to the parliament (1988). However, Younis and Mostafa remind us multiple role of constitutions in ensuring political accountability. Constitutions, at the same time, may be manipulated by politicians to consolidate their power and protect their political patronage. (2000, 21).

If we adopt the previous definition on political accountability developed by Mark Philp (2001) – the check on political power according to the standard widely endorsed

by the entrusting community – in order to force the political leaders to adhere to that commonly recognized societal standard, we need to install effective **popular mechanisms**.

Munishi once proposes three fundamental questions to determine the presence of political accountability. Two of the questions are: 1) are the means of making the policy-makers aware of what the people want clearly set out? 2) do the people themselves have a means of knowing what administrators are doing in the area of socio-economic development? (1988, quoted in Younis and Mostafa) From his conception, we understand that the actualization of political accountability requires the knowledge by the people of the activities of the government. The importance of providing knowledge about the governance is echoed in the propositions provided by Bealey. He argues that, *“without knowledge democracy is flawed. Not only participation in institutional decision-making but also popular discussion and controversy is hampered when certain information is not know”* (1988, 263). Another aspect is, of course, the ability for the people to restrain the government and impose sanctions to hold it accountable.

The major popular mechanisms, as summarized by Allan McConnell, include elections, political parties, pressure groups and the mass media (1996). (He refers to the popular mechanisms in a British parliamentary system. However, in my opinion,

its applicability is not hampered by the differences between parliamentary and consensus models of democracy). If these mechanisms function properly, they can effectively assist the dissemination of information to the public and serve as effective means to uphold political accountability. However, as MacPherson warns us, there is potential for these popular mechanisms to become antithetical to public accountability (MacPherson 1972)

In the following discussion, I would elaborate on both the facilitating and countervailing roles of these popular mechanisms to political accountability one by one:

3.4.2.1 Elections/ Electoral sanctions

Election forms the cornerstone of classical theories of democracy. Apart from choosing particular leaders into political office, it can also confer the necessary legitimacy on the ruling regime. Moreover, election is capable of promoting accountability also.

According to Anthony Downs, the doyen of economists who employ economic theories to analyze political behaviour, a politician seeking for vote is no difference with an entrepreneur seeking maximum profits. Downs claims, politicians “formulate

whatever policies they believe will gain the most votes, just as entrepreneurs produce whatever products they believe will gain the most profits” (1957, 295). Therefore, they need to respond to the wishes of the voters and act in their good interest in order to gain political powers. The power vested in the public to “vote the rascals out” is an effective weapon to ensure that those candidates in elections must pay at least some if not all attention to the preference of voters.

On the other hand, election is conducive for the citizens to gain an enlightened understanding of the public matters, which is an essential precondition of healthy accountability. Electoral campaigns provide periodic yet important opportunities for the governing as well as minor parties to disseminate information on its achievement and announce their future policy platforms. They may be done through the publication of manifestoes, press release, distribution of leaflets and blurbs, media interview, public debates, and so on. The sudden gush of information being fed to the voters, though maybe too ponderous to digest, indeed provides a fertile ground for pluralistic dissemination of knowledge about public affairs among the citizens (McConnell 1996). The information proffered to voters comes from multi-dimensional instead of a single official source. They form the basis on which the public can better assess the performance of the incumbent government.

Though so ideal it may seem, the claim that election can genuinely foster public accountability is challenged in the last few decades. Many features of modern democratic elections have indeed hindered the people to restraint the government. It is an open secret that government may often withhold instead of reveal information in order to secure the incumbency. Transparency is obviously not always the recipe to electoral victory. Indeed, in many cases political disadvantage can be avoided by withholding critical information that might damage one's prospect of electoral success. The governing parties will be reluctant to reveal some accurate yet damaging details about the government to the public. The emergence of "spin doctors" and public relations advisors in many countries has been a worrying sign of diminishing public accountability.

Besides the lack of free flow of information, many aspects of election just cannot ensure government accountability. The low turnout rate of election means that the government is unchecked by a large number of eligible voters. Low level of political participation in the society is widespread in modern democracies. Illiteracy and poverty can no longer account for the extensive political apathy as reflected by the unsatisfactory voting turnout.

Normally, as Schumpeter notes, citizens will consider their vote as ineffective to change the political settings. Since it is difficult for a single vote to bring any impact

to politics, citizens are often reluctant to invest time to learn about politics, let alone using their votes to hold the government accountable. The high rate of non-voting is indeed a symptom of this sense of powerlessness. (1942)

In addition to the lack of a sense of political efficacy, the high costs in political deliberation also deter the public from using the franchise effectively to hold the government accountable. As Anthony Downs forcefully argues, the incentive for voters to be interested and well informed about politics is indeed very weak (Downs 1957). Making an informed decision during election requires indeed huge investment of time and effort in digesting various sources of information and deliberating on countless issues. He thus subsequently stresses that, “any concept of democracy based on an electorate of equally well-informed citizens is irrational”. (1957, 236)

Mancur Olson also reminds us the problem of free riding in large-scale political activities. If people in a community share the same interest or goals, they will tend to expect others to pay efforts and then enjoy the collective fruit without any contribution (1965). This economics-based “logic of collective action” equally applies to the utilization of franchise as a tool of upholding public accountability. As mentioned before, the successful operation of vertical accountability necessitates extensive public participation. However, if the logic of collective action holds, voters will expect others to assess the performance of the incumbents and use their vote to

reward or sanction accordingly. They would be rationally apathetic and ignorant to public affairs. The end result is, inevitably, that the governing party is left unscathed even with some policy blunders and bad performance.

Furthermore, when people cast their votes, they may not aim at holding the government to account at all. An empirical study conducted in 1990 shows that the performance of the incumbent only accounts for about 10% of the variance of voting (in Britain) (Rose and McAllister, 1990). It may be a good indication that voters' loyalty can be very intense.

Recent empirical analysis also points to the same conclusion, though through a different steps. Conceptually, election can serve dual purposes: to put people whom voters think good in office, or to kick incumbent whom voters think bad out of office. These two purposes are somehow in dilemma. The empirical study of Fearon shows that actually majority of people conceive election as opportunities to select good candidate rather than as sanctions to deter lethargy or unresponsiveness by present and future incumbents (1999). Therefore, accountability can only be strived when people can discern bad performance from good one, and then select the candidate which voters think may bring good governance in the election. Voters can only distinguish bad politicians from good ones by observing their performance in office. As Fearon points out, thus, "good monitoring induces bad types to act like good ones,

so selection becomes difficult but also less important. Band monitoring leads bad types to shirk more, which make selection possible, but also makes it a noisy and fallible enterprise for voters” (1999, 83). In any event, normally, voters have to select one purpose at the expense of other.

The study by Manin, Przeworski and Stokes revealed that in fact election is far from sufficient to insure that the government will act in the best interest of the citizens. In order to secure representation and political accountability through public voting, there must be some institutions that would enhance the clarity of responsibility, which in turn facilitate the voters in rewarding or punishing those who should be deemed politically responsible in the election (1999). The most important institutions, or “accountability agencies” as they term, are the ones that can provide independent information about the government. Some typical examples are an independent board to assure transparency of campaign contributions, an independent auditing branch of the state, an independent source of statistical information about the state of the economy (1999, 50).

Finally, the governments are often in the position to distance themselves from the electorates and their inquiries. The essence of parliamentary system – it should be equally applicable to any representative democracy in my opinion – as Miliband gaudily indicates, is to provide “a buffer between government and people” (1982, 39).

The spirit of accountability in modern representative democracy is, as covered in the previous chapter, not to impose strenuous burden on the governments but to strive for a proper balance between political empowerment and control. However, this very nature of representation is often manipulated by politicians to ward off legitimate public enquiries or accountability measures. The distance between the government and the voters, as McConnell notices, is often further widened by a panoply of factors such as party system, the whip system and the careerism of politicians. (McConnell 1996, 18)

3.4.2.2 Other Popular Mechanisms

Apart from election as the most important popular mechanism, pressure groups and mass media also serve as less institutionalized but equally important vertical accountability agents:

3.4.2.2.1 Pressure groups

The burgeoning of pressure groups in many democracies has facilitated the maturation of vertical accountability. Pressure group, defined as an organized

association that aims to influence the policies or actions of government by public pressure or protests (Heywood 2002), becomes momentous in politics after the 1960s. Apart from the various influence pressure groups can exert, they can also somehow promote government accountability.

Grant invents the concepts of *insider groups* and *outsider groups* to differentiate the status that interest groups possess in relation to the government and the strategies they employ to influence government policies (Grant, 1989). The former enjoy regular privileged access to the government and are consulted by the government frequently in their policy formulation process. The latter, as Grant defines, are groups that “either do not wish to become enmeshed in a consultative relationship with officials, or are unable to gain recognition.” (1989, 15).

For insider groups, due to their privileged status, they can employ their insider status to affect policy initiatives and exercise control. Jordan and Richardson, two prominent scholars on pressure groups, argue that government can be duly restrained by institutionalizing the compromise structure between the government and insider groups (Richardson and Jordan 1979). Because “pressure groups and governments have come to recognize that they need each other in order to achieve their respective objectives” (Richardson and Jordan 1979), accountability from the government is duly fostered by such process.

For outsider groups, since they lack the access to policy-making process, they have to make their voice public in order to exert indirect influence on the government. In any event, as Kingdom points out clearly, in order for pressure groups to hold government to account, they must hold something of use to government. (Kingdom, 1991)

The ability of pressure groups to ensure public accountability may be hampered by several ways though. “Mobilization of bias”, a concept coined by Bachrach and Baratz (1970), is the first typical example. They argue that, “political systems tend consistently to develop a mobilization of bias, a set of values, beliefs, rituals and procedures which can be exploited by beneficiaries of the unequal value-allocation to defend and promote their preferred position” (1970, 105). They further point out that the dominance of the privileged group in the society can prevent the unprivileged group from raising issues that may menace their interest and status (1970).

Moreover, a group of neo-pluralists starting from Lindblom (Lindblom 1977, Offe 1984) remind us that the game of politics is never played on a level-playing field. The so-called political consensus must be biased towards particular groups. The implication is that certain groups are less strategically placed to hold the government to give account. Political system may even “prevent demands from becoming political issues or even from being made” (Lukes 1974, 38). Some demands may be labeled as

anachronistic or illegitimate at the outset. In sum, in a democratic system, pressure groups may provide feedback. However, their feedback may be mediated, mobilized out from the political system or curbed from existing at the very inception (McConnell 1996).

3.4.2.2.2 *Mass Media*

Again, mass media plays a dual role in holding the government to account. Though they are not positioned in the formal institutional framework of the government, their political clout lies in the ability to disseminate information effectively and monitoring public administration by media investigation. Therefore, if people can better utilize the mass media and also maintain the freedom of press, media's role in promoting accountability can be enormous and resembling that of popular accountability.

Since providing information is an important aspect of government accountability, channels must be made available for public officials to proffer information about how political power is used. Different from spreading news in a small community, governments need to communicate as well as articulate their views or policies to the wide electorate. They have to inform the citizens what is happening in the government

and to lobby for public support. The government thus has to rely on media as the channel to transmit their messages, while the media in turn collect, interpret and convey information to the general public.

Moreover, the mass media is significant in restraining political power. Public officials will be more precarious in their behaviour and in exercising their power if there exists a probable prospect that their misconduct or abuse of power will be put under the spotlight. In order to forge such belief among political leaders, on the other hand, the media must be prepared and willing to accomplish the task of a watchdog. The scrutinizing power can force the government to explain administrative blunders and personal misconducts. The mass media can also perform a de facto sanctioning function by raising public concern and triggering public discontent, which in turn punish the relevant public officials by undermining their prospect of re-election.

However, the power of the mass media to restrain the government may be impeded by various means. Many apparatuses and measures are at the disposal of the government to muzzle the media or to neutralize its impact. Direct censorship, court actions and legal regulation on media are the most palpable tools in this regard. More importantly, as McConnell quite rightly points out, the media just does not necessarily mirror public concerns accurately. He reminds the proponents of media oversight that media may “select and edit, dramatizing some and repressing other events according

to their own standard and rules” (Gouldner, quoted in McConnell, 1996:36). In short, media may not be an impartial and representative agent to stand for the public to monitor the activities of the government. Given its strength and deficiencies, again, the mass media is ambivalent in ensuring vertical accountability. Although mass media is not a machine at the deployment of the government, their arena to exert political influence – including facilitating public accountability – is never unrestricted (Eldridge 1993).

3.4.2.2.3 *Political party (The role of political party in horizontal accountability mechanism will be discussed in later section)*

Political party is another important vertical accountability agents. Indeed, representative democracy and modern democratic practices have to be carried out by political parties. Indeed, many scholars suggest that it would be impossible to establish a democratic government without political parties (Katz 1980, Blondel 1990).

Political parties are important vehicles to aggregate the opinions of the mass and channel the energy of the civil society into the political process in an effective way. Parties can also act as an important actor in ensuring government accountability. They

can assist in extracting information from the government. The party members in the legislature in modern representative democracies are normally vested with various devices to elicit information from the government (to be discussed in the next section). Moreover, minority parties can exercise control by raising issues in matters that are mostly related to them. For the sake of legitimacy, the government has to be seemingly accountable and answerable to the public concerns articulated by political parties (Packenham 1970).

3.4.3 Political Accountability – Horizontal Accountability

Agents

3.4.3.1 Accountability to Legislature

In terms of horizontal accountability, the most significant agency to secure political accountability is surely the legislature. Here, we have to differentiate the legislative oversight in a parliamentary and a presidential system.

3.4.3.2 Presidential and Parliamentary Visions

In a presidential system, there is no concept of responsible government, and the president does not require the confidence of the assembly to rule (Roskin 1998). The presidency, in the capacity of a single-person executive, is wholly detached from the birth of the legislature. In case of accountability, as Jones articulates, under the prevailing ethos of separatism and dispersal of powers in the executive-legislative relationship, a presidential system has substantial individual accountability but limited collective accountability (1996). As contrast with the parliamentary system, the presidential leadership or presidency is the unit which is constrained by horizontal accountability agents.

On the contrary, the guiding principle of parliamentary accountability is that the continuance of office of the ruling cabinet is dependent on the pleasure and confidence of the legislature (Marshall 1991). Just as Woodhouse presents, “accountability to the legislature (in a parliamentary system) is constitutionally of most significance” (1994, 3).

There are two distinct types of separation of powers in these two models of executive-legislative relationship. By a complicated mathematical model, Persson, Roland and Tabellini deduces that the design of checks and balances is a crucial factor in determining whether political accountability can be strived for. In addition to the claim that election must work together with horizontal accountability, they further

contend that if the right form of separation of powers is provided, the government will be as a whole induced to reveal to citizens the accurate condition of governance and this would in turn enable to uphold representation through election. Specifically, they point out that the collective accountability of the cabinet in a parliamentary system, though indirect, would facilitate the timely removal of any incompetent officials. (1997)

The practice of parliamentary accountability in British ministerial system is widely acclaimed as the epitome of horizontal political accountability. Indeed, the majority of literature on legislative oversight and its contribution to political accountability is based on accountability mechanisms and practices in Britain. It is sensible and inevitable to devote significant coverage to the context of British ministerial system in terms of operation of accountability.

3.4.3.3 Political accountability in British Ministerial System – the importance of Constitutional Conventions

It must be stressed that the ministerial system in Britain is not derived from their unwritten constitution. In fact, political accountability in Britain is solely derived from *constitutional conventions* – the political practices without any legal force.

Constitution constructs the framework of executive-legislative relationship, while constitutional conventions provide concrete substances into that framework and guide the manner how the executive is held accountable.

A number of prominent public law scholars in Britain such as Dicey (1959), Sir Ivor Jennings (1959), Hood Philips (1973), Geoffrey Marshall and Graeme Moodie (1971) have indeed devoted significant effort to explore the political aspects of constitutional conventions in British politics. Among them, the book *Constitutional Conventions: the Rules and Forms of Political Accountability* by Marshall (1984) is the leading work in examining British ministerial system as well as illustrates the inter-marriage of law and politics by means of conventions in the context of political accountability.

Marshall and Moodie have provided a useful working definition of constitutional convention – “*by conventions of the constitution, we mean binding rules of constitutional behaviour which are considered to be binding by and upon those who operate the Constitution, but which are not enforced by the law courts (although the courts may recognize their existence), nor by the presiding officers in the Houses of the Parliaments*” (Marshall and Moodie 1971)

Conventions are created and established by time-honoured behaviour patterns or express agreements. They are not obligatory legal rules, but only political practices.

Despite the unenforceability in courtroom, it is generally accepted in political principles that conventions are binding on the activities of the government officials.

The reason is that since the establishment with good reason, conventions should be regarded as precedents and awarded binding effect (Jennings 1959)

The ministerial systems in Britain operate in the mode of parliamentary cabinet as the executive body, the House of Commons as the legislature (the power of the House of Lord is largely restricted). However, no constitutional document or statute creates the Cabinet, determines its power in detail as well as who sit in it, and describes the relationship between the Cabinet and the House of Commons. The principle of accountable government takes form mostly in informal rules that have arisen to modify the legal framework of the constitutions.

The principle of political accountability in British government involves two general aspects: the *individual responsibility* of ministers for their departments and their own personal activities, and the *collective responsibility* of the Cabinet as a whole. Both individual ministers and the government collectively must answer to the legislature for their actions and resign if the legislature loses confidence in their performance. Though not legally binding, the ruling regime would seldom breach an entrenched convention at the expense of its political legitimacy.

3.4.3.3.1 *Individual responsibility*

Classic theory on individual responsibility stipulates that ministers are responsible for both their own actions as well as the activities of their officials in departments they are in charge. As Herbert Morrison put it precisely, “a minister is responsible for every stamp stuck on an envelope” (quoted in Marshall and Moodie 1971, 84). However, the size and complexity of operations in modern governmental departments preclude the possibility of a minister to know all the action of his officials. A broad application of culpability is no longer favourable to present public administration. Therefore, in Canada and Britain, ministers are not held culpable for all the actions of their subordinates now. The scope of responsibility is limited to personal unethical misconduct, their blunders or gross negligence in administration as well as serious mistakes by his officials which are also construed as their personal faults. Conflict of interest, personal enrichment from the post and wrongful disclosure of confidential information may all entail culpable resignation also (Marshall 1986).

Another aspect of individual responsibility is the political practice that members of the legislature can direct questions to ministers concerning their administrative responsibilities. Such *informational answerability* operates by the convention that during a prescribed Oral Question Period, members of the House of Commons may

pose questions of any minister present without giving prior notice of the issue to be raised. Though this is no obligation upon any minister to answer any questions, in most of the cases response will be made (Marshall 1986). (Mechanism to ensure answerability will be discussed in later section)

According to Woodhouse, however, the effectiveness of individual ministerial responsibility in Britain conceivably deteriorates (1994). She ascribes this phenomenon to several reasons – the executive becomes too dominant, the reputation of the Parliament diminishes, information flow is successfully controlled by the executive, the growth of size and complexity of the government which is beyond the control of particular minister, the emergence of nationalized industries which has blurred the lines of responsibility (to be discussed later), and an enlarged bureaucracy which renders ministers difficult if not possible to exercise direct control over. (1994, 15-23)

3.4.3.3.2 Collective Responsibility

The ultimate rationale for collective responsibility is that the Cabinet of ministers should direct the affair of the state with a single public voice and retain office only so long the majority of the elected representatives of the public have confidence in their

abilities. Thus the Cabinet holds collective responsibility *to themselves* and *to the legislature*.

It is accepted that ministers of a Cabinet share responsibility to each other in two ways – “*they must maintain a public posture of unanimity in support of the policies decided upon by the Cabinet (cabinet solidarity), and they must respect the confidentiality of the materials reviewed and of discussions held in reaching those decisions (cabinet confidentiality).*” (Heard 1991, 62)

Cabinet solidarity allows frank discussions while the matter is in the stage of consideration, and mandates the government to act as a single unit once a decision is made. Thus such convention is established that minister must not openly dispute decisions and must vote in favour of all government policies (Heard 1991, 50-51).

Cabinet confidentiality requires ministers to keep secret of the material reviewed and arguments within the Cabinet during the discussion. Such confidentiality extends to the anonymity of ministers who have opposing views during the debates leading to a final decision. It is believed that free and open discussion on sensitive political issues within the Cabinet is only possible with this blanket of confidentiality.

Finally, the collective responsibility to the legislature is achieved by the rule of confidence. The Cabinet must resign or call for an election when it loses the confidence of the legislature. Thus, the executive is exposed to the threat of removal

by the legislature all the time. The confidence rule forms the foundation of an accountable government, but it remains entirely in the realm of convention (Heard 1991, 68).

3.4.3.3 *Parliamentary Questions, Debates and Standing Committee*

Before mid-19th century, the ministers would have duly fulfilled their major part of accountability by answering the questions and participating in the debates in the Parliament (Pyper 1996, 49). Although the role of sanction has subsequently emerged afterwards, the element of achieving answerability in the model of accountability still leaves its vestige in horizontal accountability framework nowadays.

The Parliament in Britain is still vested with a collection of mechanisms, with varying degree of efficacy, to exercise Parliamentary scrutiny over the activities of the cabinet.

The Parliamentary Questions (PQ) is an important method for the members of the Parliament (mainly the House of Commons) to elicit information from the executive. Ministers can be questioned about nearly every aspect of their departmental responsibilities and duties by PQs. According to Franklin and Norton, members of the Parliaments do incline to use PQs (especially for written answers) to monitor

departmental performance as well as fish for information that would be difficult to be solicited elsewhere (1993, 109).

Because of the wide-ranging topic of which it may address to, PQ is, as Pyper suggests, “designed to bring about the accountability of ministers for their role responsibilities as policy leaders, departmental managers, departmental ambassadors and legislative pilots” (1996, 58). Moreover, since PQs may cover the details of duties discharged by civil servants, particular questions may attract ministerial attentions to the work done by their departmental staff under their supervision. The civil servants need to be answerable to their ministers for their conducts. Thus, PQs may indirectly force the ministers, in the capacity of a departmental manager, to entrench the internal form of accountability within a department (1996).

However, the efficacy of PQs in enhancing Parliamentary accountability has also been disputed. For example, it is found that there is a recognized list of topics on which ministers have always declined to be questioned (Sedgemore 1980, quoted in Pyper 1996). Moreover, Pyper suggests ministers indeed can evade answering particular questions by claiming that the information requested is unavailable, or can only be obtained at an unreasonable cost. He also brings about the issue of the extensive coverage of PQs. Because the potential targets for PQs are various, many members adopt a scatter-gun approach – asking all sorts of questions, no matter how

innocuous or harmless it may be – and thus render PQs increasingly ineffective in holding ministers to account (Pyper 1996).

Parliamentary debate is another important way to foster government answerability. The most discernable contribution of parliamentary debates to public accountability lies in its function to bring ministers to appear in the legislature and to answer for their exercise of political power.

The function of standing committees is to discuss the wordings of the clauses and suggest possible amendments during the legislation process. Because one of the main duty of ministers is to implement policy by pushing forward relevant bills and legislation, the standing committee can act as an effective medium to check on the executive. Although the drafting of bills are mainly done by the civil servants, the ministers, as Griffiths notes, “needs to be constantly on the alert and any defects he or his policy reveals will be very quickly exploited by his political opponents” (1981, 130-131).

However, Griffiths also points out the limitation of these standing committees. Because solely the ministers can gain access to particular details of the bills or expertise knowledge of the government officials, even the dedicated members of the standing committees may find it difficult to exercise effective scrutiny over the process. The scrutiny of ministers is thus, as Griffiths points out, “a measure of

superficiality based on an inadequacy of information” (1981, 131). Furthermore, Norton argues that the oversight by these committees is often time-consuming, or in worse case, becomes a continuation of the party battle instead of check on the legislative process (1993).

In Britain, the Parliament may also set up some audit or public accounts committee to conduct regular financial auditing. Financial audit reports will be filed with the Public Accounts Committee of the House of Commons. Since the officials of the Committee can inquire the rationale of particular decisions and request for evidence related to financial management, the ministers as well as the civil servants can be held accountable to the Committee, and hence the Parliament, for operations (in particular financial management) of the government departments.

3.4.4 Legal Accountability – Horizontal Accountability Agent

The legal accountability (used interchangeably with “judicial accountability” in existing academic literature) also plays a paramount role in securing accountability from the public officials.

The emergence of legal accountability is due to the inadequacy of traditional model of accountability to tackle with the increasingly complicated system of public

governance in the last century. Various scholars have long noticed the shortcomings of the political accountability mechanism. The widespread of the New Public Management reform (will be discussed later), which introduces fragmentation and devolution in public management, has led to the prevalence of use of legal or quasi-legal agreements in public governance. Thus, the nature of public governance inevitably gravitates to the legal instead of political end, creating the frequent use of legal actions rather than political means to settle disputes concerning public administration. Judicial oversight, as Stone notes, have been quickly developed also to supplement the deficiency of the traditional framework of political accountability. As he says, “developments have been sufficiently distinctive, extensive and important for us to describe them as creating a new system of accountability in (Westminster) democracies.” (Stone 1995, 515)

Legal accountability is, as normally perceived, exercised by two methods. Judicial review is one important option. Administrative decisions and actions are open to inspection by the court and can be duly challenged by a judicial review. Political decisions can also be quashed after the advent of the *Wednesbury* unreasonableness and natural justice as a ground for judicial review (Barnett 2002). This empowers the judges to hold ministers to account for their actions and decisions according to the standard of the rule of law. This led Lord Irvine, a prominent judge in Britain, to

comment that “the consequences of the ‘democratic deficit’, the want of parliamentary control over the executive in recent years, has been, to an important degree, mitigated by the rigours of judicial review” (1996, 67).

Public officials are also subject to the legal control of some quasi-legal regulatory agencies or some constituted rules and regulations outside their departments. The most typical examples are the Ombudsman, Corruption Commissions or Audit Commissions.

3.5 The Impact of New Public Management:

The impact of the new public management (NPM) to the operation of democratic accountability, which was adopted extensively in Britain and the United States starting from the eighties, does deserve some space in this literature review. The NPM reforms bring various autonomous public agencies into current political settings and expand the scope of managerial freedom, financial autonomy, flexibility in personnel management and public-private partnership at the same time.

Decentralization of power, devolution of authority, contracting-out and empowering public managers have been the leading maxims of the NPM reforms that

have been prevailing in the past two decades. Establishing public agencies run by business principles and expanding the freedom and discretion enjoyed by public managers are two vital steps to materialize those maxims.

These autonomous entities are endowed with considerable financial and personnel autonomy, and have taken up extensive duties of public service delivery. They operate like private corporations with maximum operational autonomy. The extensive managerial powers enjoyed by public managers put the effectiveness of traditional accountability mechanisms such as question time in legislature and administrative tribunal hearing into serious doubt. They are not, straightly speaking, government officials and probably stay outside the vista of existing legislative or judicial oversight.

Moreover, the increased managerial autonomy diminishes the transparency of public service provision. The “smoke-screen of managerial autonomy” enables the incumbent politicians to readily take credit for good performance while blame the chief executive for any poor performance of these autonomous agencies. (Rhodes 1997, 55) Thus, mangerialism poses double challenges to accountability: it reduces the vigour of elected representatives to scrutinize the programmes undertaken by public agencies, and expand the avenues for politicians to evade responsibility and shift the brunt onto the public managers.

In the absence of adequate control, the newly acquired autonomy also leaves rooms for public servants to utilize the public vehicles for private or partisan gains. They enjoy flexibility in deploying human resources as well as greater financial autonomy in using public funds. These conditions are extremely conducive corruption and fraud, or less severe, nepotism and political patronage. It has been pointed out that fraud and abuse of public power have been plaguing the public sectors in OECD countries such as Britain, Australia, New Zealand, US and Canada (Gregory 1999). Decentralized and relaxed budgeting control also poses a challenge to financial accountability (Haque 2000).

The increasing prevalence of contracting-out and public-private partnership is no less detrimental to public accountability. The closer partnership or alliance with private firms, the more the transparency of public-private transactions is reduced. Thus, the improper use of public resources for private interest is more difficult to be put under spotlight. Also, the duties between the government and private sectors may not be clearly meted in contractual agreement. As Peter (1993) points out, the flourishing of public-private partnership diminishes public accountability because common citizens “*may simply not be able to determine whether government or its contractors is responsible for the particular service, and officials who want to may [just] be able to evade responsibility*” (Peter 383).

Flexible personnel management and empowerment of the front-line workers within the bureaucracy are another major principles propounded in the NPM reforms. The breakdown of politics/administration dichotomy and the dwindling political neutrality of bureaucrats also leave their imprints on public accountability.

The increasing complexity of the public service and the rigidity of meritocratic procedures and rules in classical bureaucracy become impediments for the government to respond to hasty political, economic and social changes. Therefore, a major objective of reinventing government project is to instill flexibility in civil service systems and transform various managerial controls into managerial empowerment. Moreover, there is a growing public consensus that civil servants (including the middle- or lower-rank ones) should bear a portion of personal and political responsibility for their administration.

Therefore, the traditional typology of political and administrative accountability can no longer cater the intricacy of modern governance environment. The separation of administration from policy is also difficult to continue in a new institutional structure that is permeated with business values and debureaucratization ideologies.

The emergence of professional accountability is indeed an interesting development. There is a widespread acknowledgement that the traditional notion of

political and administrative accountability can no longer serve as the sole model of accountability (Barberis 1998, 452).

The emergence of professional responsibility is exactly prompted by the recognition that traditional set of public accountability has its limitations. The operation of professional accountability is completely at odd with traditional administrative accountability because it does not entail any external force. Professionals will be held accountable even in “an unsupervised context” by the drive of internalized norms and ethics instead of monitoring, and by one’s own sense of professional guilt or malfeasance instead of potential threat of sanction (Romzek and Dubnick 1987)

The emergence of internal and professional accountability necessarily leads to the expansion of personal responsibility of civil servants (Mulgan 2000). These notions are at loggerheads with classical bureaucracy, in which bureaucrats are merely technocrats and should be devoid of political responsibility. Civil servants now have to assume certain political responsibility originally shouldered by politicians. The abating distinction between policymaking and implementation precisely reveals that administration inevitably involves political consideration and discretionary judgment, which transcend the confines of effectiveness and efficiency. Politicization of civil

service means that civil servants now have to play a more proactive role in formulating, explaining and defending public policies.

However, as Harmon (1995) argues, such development necessarily places the civil servants into contradictory expectations of accountability, which he calls “paradox of accountability” – *“if public servants are accountable solely for the effective achievement of purposes mandated by political authority, then as mere instruments of that authority they bear no personal responsibility as moral agents for the products of their actions. If, on the other hand, public servants actively participate in determining public purposes, their accountability is compromised and political authority is undermined.”* (Harmon 185).

It will create a two-fold pathology: “atrophy of personal responsibility” and “atrophy of political authority”. The former means, if we deny public servants the role of policy formulation, they can also deny personal responsibility for the consequences of the administration. If they are solely accountable for the achievement of policies formulated by politicians, they will fail to acknowledge the moral consequences of their actions. Conversely, the latter means, by granting public servants the responsibility to formulate public policies, it is likely that they will only be answerable to themselves, thus undermining political authority and public

accountability. “Professional accountability” is turned into mere euphemism for bureaucrats to manipulate the political processes (Harmon 186-187).

This leads us to the query that, whether responsibility for decision-making can be delegated while the accountability for decisions taken is retained. If the delegation of authority is genuine, logically, accountability must go with it. However, these officials are not democratically elected and public-mandated. Such “accountability gap” (Barberis 1998, 461) and such inroad to democratic principles remain a perennial dilemma in redesigning modern public governance. Resolving this necessitates a clear delineation and apportionment of responsibility and accountability between civil servants and their political seniors. As Giddings (1995) competently summarizes, “*the crux of the matter lies in the ability accurately to delimit the scope of the authority to be delegated and the clarity and robustness of the limits so determined*” (223).

3.6 Accountability in Today’s Democratic Governance – a Convolutd Model

As we have seen, because of the advent of several matters, traditional mode of democratic accountability mechanism is increasingly defunct, if not obsolete. The

mechanism of democratic accountability nowadays actually exists in a more complicated circuit. Apart from citizens' participation through periodic elections, a range of auxiliary precautions and alternative forms of accountability also come into the picture. Such a pluralistic perspective is widely supported because there is a widespread acknowledgement that the traditional notion of political accountability can no longer serve as the sole constitutional touchstone of accountability. The concurrent operation of different types of accountability can remedy the shortcoming of others. The final product is thus a convoluted mechanism of accountability with overlapping modalities. (Flinders 2001)

The interminable discussion above on democratic accountability mechanism serves to point out one single lesson. In fulfilling the aspiration of accountability, we have to move from the normative or theoretical orientation to the more organizational arrangement. By this vein the accumulated wisdom on political institutions by political scientists comes in.

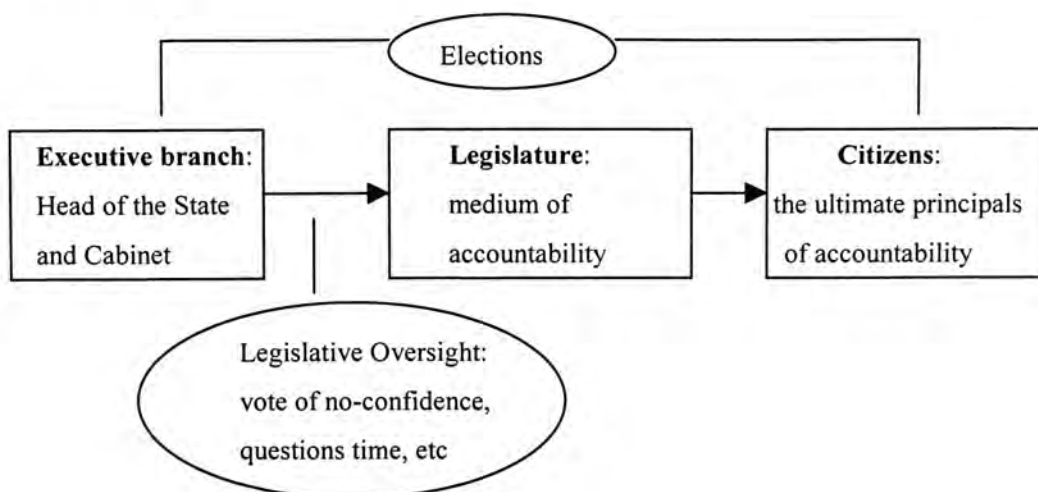
Overall, institution does matter in democratic accountability. The whole project of designing accountability institutions requires a careful matching of appropriate institutional structures to the differing types of issues and skills involved (DeLeon 1998).

3.7 The Relevance to Hong Kong

After going through the long academic voyage, it is time to summarize the lessons and see how they can be relevant to the intellectual enquiry of the politics of accountability in Hong Kong.

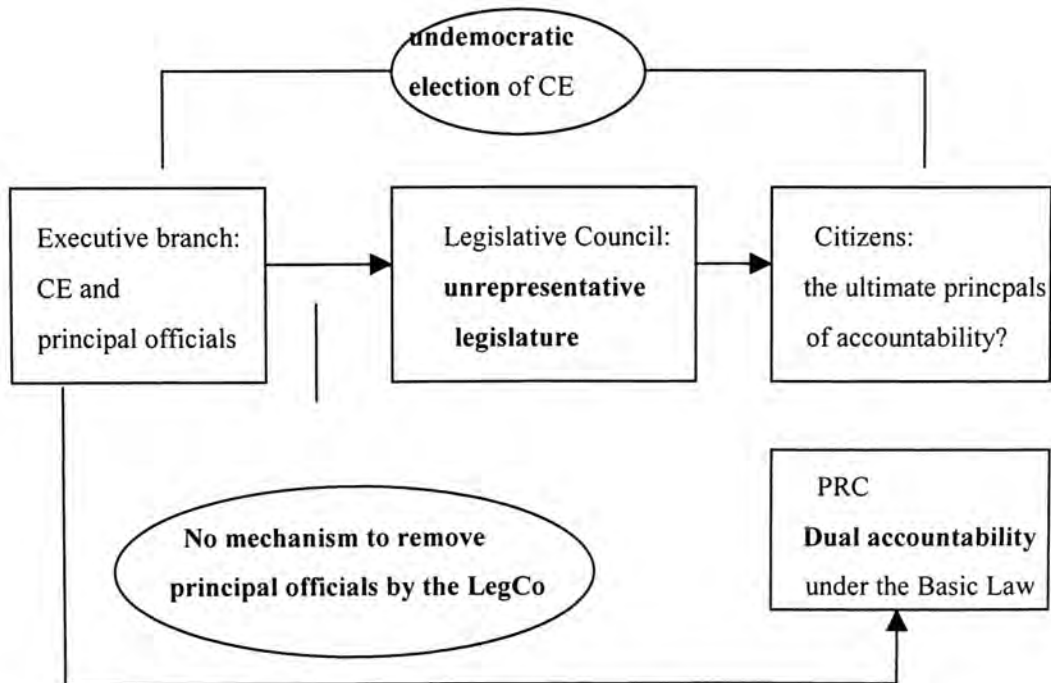
Because of the dominance of democratic theory in the discussion of political accountability, we are left with no option but to turn recourse to democratic institutions and practices in framing the theoretical framework for empirical research on such issue.

To put democratic accountability in the simplest form, it consists of election and legislature as the most significant vertical and horizontal accountability agents respectively. The government is accountable directly to the citizens through election, or indirectly accountable to the public through the legislature as a medium. A typical principal-agent model can be employed to illustrate the relationship between these institutions (see the following diagram).



Political Accountability in a Democratic Polity: a Principal-Agent Model

If we adopt the framework of democratic accountability as the yardstick in assessing the quality of political accountability in every regime, indubitably, before the introduction of the POAS, Hong Kong has fallen short of accountability before the introduction of the POAS in most, if not all, of the given criteria. The introduction of the Principal Official Accountability System cannot rectify any of the following deformities also:



Political Accountability in HK: Deviation from Democratic Model

However, we should appreciate the beauty of the argument raised by Chebal which may free us from the shackle of democratic theories in the analysis of operation of accountability. If we distill the concern of democratic institutions from our analysis and purely regard accountability as a proper balance between responsibility and empowerment, there is indeed a possibility that accountability may survive without democratic institutions. Hong Kong is at best a partial democracy (Kuan and Lau 1995). Following this vein, the important intellectual empirical query is whether accountability can survive without democracy in Hong Kong.

If we bear this point in mind, the interminable normative and empirical discussion on the concept of accountability thus has led us to the following position – if we accept the normative propriety of a government to be accountable to the whole community instead of particular sector (for example, by exercising cronyism, nepotism, corporatism, favouritism), following the theoretical framework laid down by the discussion above, **the intellectually interesting and significant question concerning political accountability in Hong Kong (and will be dealt with in this empirical research) is how the particular political framework in Hong Kong manages or fails to strive for the necessary balance between discretion and control, between administrative rationality and popular participation in political and public policy process.** It is indeed the major challenge that is encountered by

political systems worldwide, including those democratic ones, and will be utilized as the ultimate criteria of assessment in the latter discussion.

This dilemma is particularly intricate in Hong Kong because, as a matter of fact, any political accountability relationship between the government and the public would be built without the foundation of traditional democratic institutions as covered in the literature review. Yet, the literature on principal-agent model in contemporary democratic systems would lend great help in the overall organizational analysis.

Moreover, given the peculiar political setting of Hong Kong and the fledgling status of the so-called accountability system, how political elites in Hong Kong articulate their roles of representation and conception of accountability (accountable to who, accountable for what, etc) would be of great influence to the formation and institutionalization of the norms of accountability. It is such an important area which deserves in-depth and detailed intellectual exploration.

By highlighting this desideratum we now turn to the institutional analysis of the new accountability system and the entailing politics.

Chapter 4 The Principal Officials Accountability System – a Departure from the Colonial Legacy

Changing a system is never easy. It is particularly the case for a reform as fundamental as the Principal Officials Accountability System (the POAS). On 1 July 2002, the HKSAR government implemented the POAS, a new system whose goals are to enhance both the quality of public governance and accountability of the government. The POAS can be regarded as the first significant departure from the colonial political system. It implicitly casts aside the civil service-led political arrangement, which was inherited from the colonial governance, and addressed squarely to the problem of lack of governing capital enjoyed by the HKSAR government.

The following half of this thesis intends to analyze the politics of political accountability in Hong Kong after the introduction of the POAS from constitutional (Chapter 5), political (Chapter 6) and conception level (Chapter 7). Since the POAS plays an integral part in both the initiation and materialization of this research thesis, I find it necessary to provide some background information, basic structures as well as

the entailing political implications of the POAS reform to the readers before our academic enquiry.

4.1 Pre-POAS political situation of Hong Kong

One of the pressing issues for the Mainland Government before the Handover of Hong Kong was to construct the constitutional and institutional framework for the post-colonial era. Besides the need to live up the promise in the Sino-British Joint Declaration to deliver democracy and secure liberty in Hong Kong, the China government needed to cope with the equally daunting but conflicting task to preserve the prosperity and status quo of Hong Kong, as well as to contain the pace of democratization in Hong Kong to an acceptable extent to China. What they came up with, eventually, was an executive-led political structure with essentially the same features of that of the colonial government.

The overall arrangement of the post-colonial political system was largely a depoliticization process. It perceptibly introduces an anti-partisan executive arrangement, rejects party politics, and prohibits the Chief Executive from any affiliation with political party. Without the political support in the legislature, the government continues to rely on the bureaucracy to maintain effective governance.

The civil servants were bestowed with strong autonomous power to initiate and implement public policies. The senior officials assumed both political and administrative duties and act concurrently as political appointees and civil servants. On the other hand, the power of the legislature is strongly contained constitutionally by various disempowering provisions in the Basic Law, and politically by the fragmentary nature of the electoral schemes and divided electorates. The influence of elections was restricted significantly, and citizens cannot express their preference and shape policy direction through electoral votes, let alone influence the formation of government (Kuan 1999).

Such scheme of “re-bureaucratization of politics” (Cheung 1997), however, did not secure any executive dominance for the HKSAR government at all. Moreover, the role of the Chief Executive has been further paralyzed internally by bureaucratic hindrance and externally by the increasingly vibrant civil society and vigilant mass media. The government lacked the backup of strong democratic mandate (and procedural legitimacy) as well as the mobilization of any political party. In sum, without the necessary political and social foundations, executive-led political arrangement only exists in constitutional sense.

Furthermore, the government also exhibited a lack of accountability to the public in a series of administrative blunders. Although the civil service assumed a dominant

and partially political role in the public governance of Hong Kong, they were unwilling to accept any political responsibility for these strings of mishaps. The justification of so-called “political neutrality” had given senior civil servants leeway to escape from public demand for accountability. The public was thus incessantly enraged by the fact that no one ever assumed public responsibility for those policy and administrative failures. The only available means to ensure responsibility is the internal disciplinary action within the civil service, but senior bureaucrats (in the capacity of de facto ministers) would never owe a direct responsibility to the public. Even though the legislative was situated within the political structure, LegCo members were in no position to call for accountability from the civil service also. Therefore, after a concatenation of blunders, increasing demand for the senior officials to shoulder public responsibility ensued.

The urge for superiority over the bureaucracy from the ExCo and the public call for greater accountability from the bureaucrats together formed the impetus for the development of the accountability system. As seen, the political situation at that time forced the government to deal with two things – to invigorate the executive-led arrangement as well as to respond to the public pressure for accountability. (These two points will be further dealt with in Chapter 6)

In the Policy Address in 2000, the Chief Executive Tung started to address the issue of accountability. He acknowledged that senior officials should be accountable for the outcome and failure of public policies under his or her portfolio. He stated that he would consider devising a comprehensive system of public accountability, including a compatible system of appointment for principal officials, a clear statement of their powers and responsibilities and a clear definition of their role in formulating and implementing government policies (Tung 2000, paragraph 109 – 113). The formation of a new “accountability system” was further put on agenda in the Policy Address 2001, the last policy address under Tung’s first term. In his policy pledge, he promised to formulate feasible proposals of the new system (Tung 2001, paragraph 130 – 140). In running for his second term, Tung also stated clearly that he intended to put the new system into practice immediately by July 2002, when he would start his second term of office. Therefore, on 17 April 2002, Tung appeared before the LegCo and presented and explained the details of the proposed POAS. Quite surprising to everyone, the LegCo was forced to sanction the proposed system just within two months. However, eventually, the proposal successfully went through the legislature, and the new POAS was implemented on 1 July 2002, exactly the first day when Tung started his second term as the CE.

4.2 The POAS Reform – the Details and its Implications

The gist of the whole POAS reform can be found in the Legislative Council Paper: Accountability System for Principal Officials (LegCo Paper), presented by Tung in the LegCo meeting on 17 April 2002. The LegCo Paper states that the whole POAS reform was guided by three principles: the new accountability system must be consistent with the Basic Law; the stability and integrity of the civil service must be maintained; and finally, a permanent, meritocratic and politically neutral civil service must be maintained (Paragraph 8, LegCo Paper). The introduction of the whole accountability system was merely achieved through amending a single statute, the Interpretation and General Clauses Ordinance (Cap 1). Even the Basic Law and other important legislation were not touched upon.

However, one should not underestimate the impact of this single resolution. The whole accountability system has indeed brought several significant and far-reaching impacts to Hong Kong, so fundamental that the mode of public governance, arrangement of political power as well as the executive-legislative relationship have all been drastically altered.

Here, we will briefly examine the major features which are accompanying the whole reform before proceeding to the next chapter.

4.2.1 Ministerization of Bureaucratic Governance, Politicization of Administrative Governance

The most important change brought by the POAS was the end of the bureaucratic governance in Hong Kong. The positions of senior policy makers under the new accountability system will be taken up by the new layer of political appointees instead of civil servants. There will now be a total of fourteen principal officials under the POAS (three Secretaries of Department and eleven Directors of Bureaus), who would be employed on contractual terms rather than on civil service terms. The functions and power of the senior civil servants were formally succeeded by these new political appointees. In short, rule by senior bureaucrats needed to give way to rule by full-time politicians.

The POAS reform further widens the pool of talents for the CE to select to work with. Indeed, it is legitimate for the CE to select elites from business and private sectors to fill position of principal officials before the introduction of POAS. Elsie Leung, Antony Leung and Dr Yeoh Eng-kiong were the examples. However, under the legacy of bureaucratic rule after the Handover, this had remained an uncommon practice. The situation reaches a turning point after the implementation of the POAS.

Since the ruling cabinet of the HKSAR government is no longer filled up by civil servants, it is more justifiable for the CE to pick people from whatever background, ranging from the civil service to the private sectors. He is bestowed with much greater flexibility in filling the government positions according to expertise of candidates and whether it matches with particular portfolios in different departments. Hong Kong fails to nurture many political talents to fill up the political position (Lau 2002). While elites from business and social sectors were reluctant to give up their own career to pursue a political career, it was expected that the new positions would end up be filled by senior civil servants upon resignation. Eventually, three former department secretaries assumed the new political appointments, six bureau heads came from the senior civil service, and five were co-opted from the private sectors.

Article 48(5) of the Basic Law provides that only the CE has the constitutional power to nominate and remove principal officials, subject to the sanction of Central People's Government. The POAS keeps such stipulation intact. Under the new system, the principal officials will be directly responsible and accountable to the CE. They would be accountable "for the success or failure of matters falling within the portfolios assigned to them by the CE", and "would accept total responsibility and they may have to step down for serious failures relating to their portfolios" (Paragraph 2(c), LegCo Paper). These failures would include both serious failures in policy

outcome, calamity in policy administration as well as grave personal misconduct (Paragraph 2(c), LegCo Paper). That means, political appointees would now assume political responsibility for policies under their portfolios, and would be prepared, at the worst case, to be removed for policy blunders or personal misconduct. That is to say, principal officials would need to step down like “ministers” in other jurisdictions. (However, when and how would a principal official need to step down? The POAS reform was still unclear about this. This point will be covered in Chapter 5)

The new duties assumed by the principal officials also point to the direction of ministerialization. The POAS reform proposes a rather comprehensive scheme of responsibilities for the new professional politicians, with the important ones quoted in follows:

- gauge public opinion and take societal interest into account in serving the community”;
- set policy objectives and goals, and develop, formulate and shape policies;
- secure the support of the community and LegCo for their policy and legislative initiatives as well as proposals relating to fees and charges and public expenditure;
- attend full sessions of LegCo to initiate bills or motions, respond to motions and answer questions from LegCo members;

- oversee the delivery of services by the executive departments under their purview
and ensure the effective implementation and successful outcome of policies;
- to accept total responsibility for policy outcome and the delivery of services by the
relevant executive departments. (Paragraph 13, LegCo Paper)

It would be the first time for top officials in Hong Kong to be formally and constitutionally designated to the political task of lobbying and selling policy.

4.2.2 Preservation of Civil Service Neutrality

Another main objective of the POAS is to maintain the political neutrality of the civil service, and confine their work within the technocratic domain. Therefore, together with the creation of the layer of political appointees, another new layer of permanent secretaries at the rank of D8 was also formed. They will work with the respective secretaries of bureaux and departments under the new system.

The system of appointment, posting, promotion and disciplinary were not changed by the POAS. The civil service will now, however, be loyal both to the CE and to the newly-created political appointees. As the CE reiterated, the civil servants will remain meritocratic and politically neutral. As it was stated clearly, the

bureaucrats would continue to make advices, including candid or honest ones, on policy options in their best capacities. However, once decisions have been made by their superiors, “civil servants will support the decisions without question regardless of their own personal convictions, and will fully and faithfully implement decisions” (Paragraph 23, LegCo Paper).

Besides advising the principal officials on public policies, the permanent secretaries would also steer and supervise the daily functioning of the respective departments, liaise with other relevant departments or units, and ensure the smooth and timely effective implementation of the policies decided by the government, monitor the needs and voices of the community, and ensure the effective delivery of the public service to the citizens (Paragraph 20, LegCo Paper).

According to the official paper, apart from the normal duties bore by civil servants, they would now have to “assist the principal officials in formulating, explaining and defending policies, securing support of the public and the LegCo and answering LegCo questions, moving bills and taking part in motion debates in plenary sessions of LegCo” (paragraph 20(a), LegCo Paper). That means, under the framework of the POAS, the permanent secretaries could also be instructed to defend government policies.

One point to note is that the Secretary for the Civil Service will now be incorporated also as a political appointee eventually. As a “representative” from the civil service, the appointed person should have a good understanding of the system and operation of the civil service and would ensure that the interests and concerns of the bureaucracy will be fully represented and considered during the government policy formulation process. (Paragraph 19, LegCo Paper). On the other hand, however, the Secretary for the Civil Service should also be held accountable to the CE for his policy portfolios, which are mainly related to management of the civil service as well as policies about civil servants. As the only exception, after the term of his term of office, the Secretary for the Civil Service would be entitled to rejoin the bureaucracy.

4.2.3 Restructuring of the Executive Council

The final significant feature of the accountability system is the restructuring and transformation of the Executive Council (ExCo). Originally, the role of the ExCo was only confined to advisory level without any material influence in decision-making. It was mainly comprised of business elites or renowned figures from social or professional sectors, and they only served the office on a part-time basis. Three members were members of political parties, but they joined the ExCo in their personal

capacities. Member of the Democratic Alliance for the Betterment of Hong Kong (DAB) Tam Yiu-chung even needed to resign from the duty of Vice Chairman when he joined the ExCo in 1997.

However, such situation was fundamentally changed by the POAS. For the first time in Hong Kong politics are all the politically appointed principal officials appointed to the ExCo. Such move was allowed by the Basic Law as Article 55 states that the CE and appoint principal officials, LegCo members and public figures to the ExCo. It was no longer dominated by part-time members as well as senior civil servants. ExCo is now transformed from a purely advisory body into some sort ruling cabinet, which is filled by politicians who share the same political platform, values and visions in governance with that held by the CE.

Another important feature was the cooptation of two leaders of political parties into the ExCo. Five other members were also appointed to the ExCo with no portfolio duties, among them were the Chairman of the Liberal Party (LP) James Tien Pei-chun and the Chairman of the DAB Tsang Yok-shing. Such appointments initiated a new practice that people from political parties could now serve in the ExCo in the capacity of such party affiliation. As the same before, both of them would now be bound by the principle of collective responsibility, including the obligation to vote in line with the ExCo.

Though not formally proclaimed, such move virtually introduced a kind of coalition politics in the executive-legislative relationship, which was an unprecedented development in Hong Kong politics. LP, DAB and various independent pro-government legislators from the functional constituencies now formed the majority voting bloc in the legislature, whose allegiance was sustained by the power sharing with the executive, though only to a limited extent. Pro-government parties can now exert their influence in government policy both within the fragmented legislature as well as the newly revamped ExCo. On the other hand, the pro-democracy entente within the legislature, which is dominated by the Democratic Party and the Frontier, were practically marginalized by the new political arrangement. The government would only have to secure the support of the pro-government camp to push policy bills through.

By illustrating the salient characteristics of the new accountability system, we would now proceed to the institutional analysis of the POAS as well as the comprehensive appraisal of the entailing politics of political accountability arising from this reform.

Chapter 5 Structural Deficit of the POAS

The following three chapters would together present a critical review of the POAS and its entailing political interactions. The analysis will be divided into three levels: constitutional, political and conception aspects. This Chapter solely deals with the constitutional and organizational issues that arose from the systemic restructuring of the POAS. Chapter 6 assesses the new political power structure and interaction resulting from the POAS, while Chapter 7 summarizes the discovery from a host of interviews which indicates the perception towards political accountability held by some political elites who are mostly involved in this reform. Chapter 8 integrates these different aspects and positions the politics of political accountability into the overall political development as well as public aspiration for the democratization in Hong Kong.

It is normally assumed that political actors act accordingly to their ideology or values, interact with each others within the given political setting, and then produce particular political institution. However, it is the author's intention to present the analysis of POAS in a reverse order, so that reader can grasp the politics of political accountability in Hong Kong from a macroscopic structural purview to microscopic attributes embodied in the conception of political elites.

5.1 The POAS: from Accountability Deficit to Structural Deficit

The government has long been criticized for its lack of accountability to the public. One of the alleged aims of introducing the POAS is to enhance the accountability of the government. However, this Chapter argues that the POAS provides inadequate institutional foundation and guarantee in striving for an acceptable standard of accountability which may withstand the vigilance from the legislature, mass media and the civil society.

However, due to the limitation in coverage, this chapter is not meant to be a comprehensive assessment of the POAS by every aspects raised in Chapter 3. It would mainly focus on the formal institutional structure. The aspect of legal accountability and quasi-legal regulatory agencies is a much more debated area that I have no intention of entering into in this thesis.

5.2 Institutional logic of the POAS – Centralization of Policy-making Power

If we examine the institutional logic of the POAS reform at the outset, it is quite apparent that the design of this so-called “accountability system” does not square with any contemporary notion of accountability in democratic theories or political discourse. It is at best a reform to recall the political power vested in the bureaucracy as well as to allow the CE to select his own team of political appointees to work with. Removing the strong bureaucratic encumbrance in the leadership of CE and strengthening the executive-led constitutional arrangement are the guiding principles of the whole reform.

In their work *Democratic Governance*, March and Olsen reminds us the importance of suitable institutional basis in delivering accountability to the citizens. Accountability must be buttressed first by a regime of free information as well as mechanism to demand accounts, and second by the means to impose sanctions for mishaps or personal misconduct (March and Olsen, 1995). John Uhr, another scholar in public administration, also suggests equivalent propositions (Uhr 1998). If we adopt such criteria in assessing the POAS reform, it is glaringly clear that inadequate organizational device, let alone democratic institutions, was installed to put this reform also in the direction of accountability enhancement. In a nutshell, the institutional link “from the outcomes of the actions of public officials to sanctions by

citizens” (Manin, Przeworski and Stokes 1999, 10) is still found wanting, and the “structural deficit” of the POAS can be illustrated briefly in the following sections.

5.3 Lack of vertical sanctioning mechanism

The most conspicuous deficiency of the POAS was the inability for the public and the legislature to impose direct sanctions on both the CE and the principal officials. Since the POAS reform was partly instigated by the public outcry for accountability deficit in governance, it would be reasonable to expect that the new accountability system should be framed in the direction of empowering the public to punish the political appointees for their failures in public policies or personal misconduct. However, the whole reform does not even slightly touch on this issue. After all, all the policy-making powers are now concentrated in the CE and the small team of ministers, while no effective sanction mechanism is provided.

5.3.1 Election of the CE

Moreover, the CE is still institutionally divorced from the public pressure for greater accountability as well as faster democratization. It has been widely questioned

that, given the undemocratic nature of the whole political system, whether the CE would really be truly accountable to the citizens without some fundamental democratic reform (Lo 2001, Cheung 2003). The CE is only elected by an 800-member Election Committee, which is conspicuously unrepresentative given that there are now 3.5 million eligible voters in Hong Kong. However, from the perspective of vertical accountability, since the Election Committee is the only entity which “elects” the CE, the CE is only vertically accountable to the Committee within the HKSAR political setting. While public participation is virtually excluded from the process of selecting the CE, the infinitesimal representation of such small electorate renders the electoral means in Hong Kong insufficient to hold the CE accountable. The lack of a recall system by which the Election Committee can remove an unsatisfactory CE further aggravates this institutional deficit.

Worst still, the Election Committee was largely dominated by business people and staunch patriotic supporters handpicked by the Mainland government. In this vein, the tilt towards the interests of the patriotic and business tycoon in public policies seems to be an inevitable trend. It is even more worrying to notice that links between the business tycoons and the government, both covert and overt ones, becomes much stronger after the handover. As Lo Shiu-hing observes, the influential capitalists (mainly property developers) try hard to dominate the post-colonial apparatus by their

overwhelming economic power and pressure the government in order to fully safeguard the wellbeing of the property market (Lo 2002). The interest of the public was often placed in a lower priority, and representation to the mass was further undermined. By appointing both the leader of LP and DAB, the POAS further institutionalizes such power setting, and accentuate the tint of nepotism and cronyism in politics of Hong Kong.

5.3.2 Dual Accountability

The issue of dual accountability further complicates the accountability relationship in Hong Kong. The internal network of vertical accountability in Hong Kong would be potentially deformed by the presence of the meta-institutional China factor. Political accountability is not merely an internal political arrangement. It would also be restricted or influenced by factors which are outside the confines of the autonomy granted to the HKSAR.

According to Article 43 of the Basic Law, the CE “shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this law (the Basic Law)”. Thus, under the

framework of “One Country, Two Systems”, the CE would have to be accountable to two principals simultaneously constitutionally.

The vertical accountability relation between the Mainland government and the CE is drastically different from that between CE and the general public. First, although a high degree of autonomy has been granted to the HKSAR, the Basic Law reserves many exit doors and formal mechanism for the Mainland government to intervene in case the CE deviates from its preferences on the affairs of Hong Kong. The most important tool is the dormant power vested in the SCNPC to interpret the specific provisions in the Basic Law (Article 158, Basic Law). It is in complete contrast to the public of Hong Kong which has no direct means to pose some credible threat to the CE.

Second, under the unitary system of China, the power of the CE was derived from the Central People’s Government. The elected CE would also need to be authorized by the Beijing government first before assuming the office. It is a clear hierarchical relationship under the overall political framework of the Mainland. The element of empowering is absent in the accountability relationship between the CE and the citizens in Hong Kong.

Dual accountability is itself a conceptual paradox which cannot be reconciled easily, and it has defied the working rationale of a principal-agent model. The interest

and preference of both principals (Mainland Government and Hong Kong) will seldom coincide and may from time to time conflict with each other. In reframing the whole structure of accountability, it is indeed necessary to introduce some constitutional guidance or even some arbitrating mechanism in tackling the potential conflicts. It would also be a critical step in resolving the inherent contradiction in the model of "One Country, Two Systems" (Li 1999).

However, disappointingly, the POAS does not provide any tool to deal with the issue of dual accountability. The responsibility to balance the interest of the Mainland China and local community of Hong Kong was thus solely shouldered by the CE and the principal officials. Without the institutional guidance to resolve the conflict, the success of such task would mainly hinge on the political acumen and finesse of the CE. It is even more worrying to notice that Tung appears to be so eager to maintain a harmonious relationship with the Mainland Government and put the China's preference in the highest priority, sometimes even at the expense of his popularity. Public accountability to the public was therefore undermined.

If the election of the CE and problem of dual accountability is taken together, the result is likely that (as it turns out to be) the CE has to largely pander to the business interest in their socio-economic policies on one hand, and take heed to the wishes and instructions of the Central Government in the controversial political issues on the

other. Therefore, the CE is unable to forge a close relationship with the civil society, let alone a vertical accountability relationship with the general public in Hong Kong.

5.3.3 Appointment of the Principal Officials

In the level of principal officials, the government has made it absolutely clear that they owe no direct responsibility to the public as well as the legislature. They would now be “directly responsible to the Chief Executive” (Paragraph 2(f), LegCo Paper). Under the POAS setting, it is now the CE who has the sole power to appoint or remove political appointees, subject to the approval of the Mainland Government. Therefore, the CE’s satisfaction with the performance of the ministers and the policy outcome become the ultimate criteria for maintenance of ministerial office.

Public participation thus plays a minimal part in both ministerial appointment and removal. In the absence of some form of control on the appointment, public preference on the candidate of particular positions can never be channeled institutionally to the CE. It is also rather clear that the CE is not expected to either put forward the list of proposed principal officials before the Election Committee or to seek the endorsement or approval of the list from the legislature. The LegCo is in no position to offer any censure on the formation of the cabinet at the outset.

The case is equally true in removing a minister who lost the confidence of the citizens. Only the CE is constitutionally empowered to remove any principal officials with unsatisfactory performance or grave misconduct. However, as mentioned above, the CE himself is not democratically selected by popular election, the public call for the resignation of particular senior officials is just immaterial for the CE to seek victory in re-election or sustain his political career.

Moreover, Tung made it clear that passing of a vote of no-confidence towards particular principal officials, which will normally result in ministerial resignations in most parliamentary systems, would not automatically dislodge the unpopular officials from office. Such vote would only be a reference for him to decide whether to terminate the appointment (South China Morning Post, 2 July 2002). Therefore, as Rowena Kwok opines, such arrangement would foster the CE's inclination to disregard public or legislative pressures regarding whether to oust or defend an unpopular principal officials (Kwok 2003). It is far from a proper framework of public accountability. Although the creation of a cabinet is commonly believed to build a firewall which can insulate the public pressure or criticism directed towards the CE, ironically, every decision to protect a minister would now have a direct bearing on the CE's popularity and legitimacy.

5.4 Horizontal Accountability and the Lack of Constitutional Convention

In order to analyze the horizontal accountability mechanism of the POAS, we must first have the knowledge on what kind of executive-legislative relationship is postulated by the drafters of the Basic Law.

At the outset, one may argue that the scope of horizontal accountability of the principal officials has been explicitly prescribed by Article 59 and 64 of the Basic Law. Article 59 states that the Government of the HKSAR is the executive authorities, which are composed of CE, designated principal officials and appointed advisors. Article 64 provides that the Government should be accountable to the LegCo. Ironically, the latter part of this clause limits the scope of accountability, by which the Government is only bound to implement laws passed by LegCo, present regular policy address, answer questions raised by members of the Council, and obtain approval from the Council for taxation and public expenditure. Strictly speaking, principal officials are not required to be political accountable for their decisions or faults under the Basic Law. A literal approach would arrive at a conclusion that ministerial responsibility is neither assumed nor guaranteed in our constitutional

documents. This corresponds with the executive-led political design, in which the checks from the legislature should be minimized.

However, one must study carefully the formal power arrangement between the executive and legislature framed by the Basic Law before giving any conclusive answer. Although the importance of strong executive branch has always been espoused, Article 49, 50 and 52 indeed bestow on the LegCo the final controlling power over the executive.

Article 49 and 50 of the Basic Law confers dominating power on the CE over the legislature. Article 49 empowers the CE to return a bill passed by the LegCo if he considers that the bill is not compatible with the overall interest of Hong Kong. In case the LegCo passes the same bill by a two-thirds majority and the CE still refuses to sign it, Article 50 authorizes the CE to dissolve the LegCo. The power to dissolve the legislature also applies in situation where the LegCo refuses to pass a budget or any other important bill introduced by the government.

However, the CE can only exercise such dissolving power once during his office. Meanwhile, if the same bill in dispute still gets two-third majority of the newly-elected second LegCo, or the second LegCo keeps refuse to pass the budget or important bills in dispute, Article 52 stipulates that the CE must resign. The rationale behind such arrangement is that the legislature should have the final command over

the executive, so that extreme type of executive hegemony can be duly avoided. The available power to urge for the resignation of the CE empowers the legislature to pose credible threat in case the government tries to put forward unfavourable public policies. Another noteworthy implication is that the policy-making power of the government is ultimately dependent on the confidence of the legislature.

As we have seen, the semi-presidential arrangement of the Basic Law actually posits a kind of check and balance in the post-colonial executive-legislative relationship. The constitutional sanctioning power of the legislature - through calling for the CE to resignation of the CE – is itself a strong horizontal accountability mechanism. Its potential impact should not be underestimated.

However, the ability to impose sanction and uphold accountability of the legislature is politically mediated by other constitutional designs of the Basic Law. The LegCo in Hong Kong is fragmented institutionally, thanks to the divided electorate, the dominance of sectoral and functional interests, immature party politics as well as the electoral scheme of proportional representation (Kuan 1999). Producing concerted effort to provide a strong check on the executive power would be an uphill political task under such arrangement.

Both the CE and the principal officials are not constitutionally linked with the LegCo as in some parliamentary systems. As it is so difficult to invoke the operation

of Article 52, in most cases the government cannot be brought down by the legislature even in case of heightening unpopularity, while their lack of party affiliation, and hence party discipline, also removes one important source of control in contemporary parliamentary democracies. The power of the LegCo to check the executive is also severely restrained. The harsh separate voting mechanism in Annex II and the requirement of written consent from the CE in Article 74 as a whole dilute the power of LegCo to hold the Executive Authorities accountable by means of private bills.

In this vein, while the formal constitutional structures is insufficient to deliver accountability, given the tremendous difficulty in initiating fundamental political reform, it is indeed necessary for the government to develop appropriate constitutional conventions so as to fill up the void within the context of ministerial responsibility and actualize the spirit embodied in Article 52. As mentioned in Chapter 3, ministerial responsibility in parliamentary democracies is largely resulted from the evolution of legally non-binding constitutional conventions, set by precedents and continuous practice. Such responsibility can be divided into individual and collective components (Marshall 1986). (Since the focus of the POAS reform is to attribute fault to particular senior officials instead of share it to the whole cabinet, the issue of collective responsibility is only of minimal relevance here. Thus, only the issue of individual ministerial responsibility would be studied below.)

The evolution of constitutional convention is mainly driven by the political interaction among different actors, and this issue will be dealt with in the next Chapter. Institutionally, though, the proposal of the POAS indeed specifically touches upon the issue of executive-legislative relationship. However, if we carefully read the Code for the Principal Officials, it will be revealed that the POAS does not add anything new to enrich the concept of ministerial responsibility and accountability in Hong Kong. The new specifications provided by the Code are just confined to some formality issues instead of fundamentally outline the context of ministerial responsibility to the legislature.

Besides repeating the wordings of Article 62 and 64, the additional specifications in the Code in relation to the responsibility to the Legislative Council are only to “represent the Government and to transact business at meetings of the LegCo and as necessary its committees, subcommittees and panels” (Paragraph 2.9, Code for Principal Officials), “ensure that they would be available to attend meetings of the LegCo when matters relating to their respective portfolios are discussed” (Paragraph 2.10), and to “give accurate and truthful information to the LegCo and correct any error at the earliest opportunities” (Paragraph 2.11). By no means has the Code or the Basic Law provided any institutional framework for individual responsibility as well as guidance in dealing with situation in which issues of public accountability arise.

5.5 Risk of Politicizations of the Civil Service

Furthermore, the boundary between political and administrative accountability has still remained blurred within the POAS framework. The scope of accountability between the principal officials and the bureaucracy has to be first delineated clearly so as to form the institutional basis to hold ministers accountable as well as preserve political neutrality of the civil service.

Again, the Basic Law does not provide much assistance in this regard. Article 64 only specifies “the Executive Authorities” as a whole to be accountable to the legislature, but how this accountability should be meted out among the political appointees and the civil service remains a conundrum in public administration in Hong Kong.

The government document of the POAS does sketch rough outlines of the duties of the permanent secretaries. Their pivotal roles are enlisted in the Paragraph 20 of the LegCo Paper as follows:

- to assist the principal officials in formulating, explaining and defending policies, securing support of the public and LegCo and answering LegCo, moving bills and taking parts in

motion debates in plenary sessions of LegCo ... explain and defend policies in public including at meetings of LegCo panels and committees

- to steer and coordinate with the executive departments falling within the respective portfolios of the principal officials, and liaise with other departments in implementing particular policies
- to assist the principal officials in acquiring and deploying resource for the policies implementation
- to monitor the needs and aspiration of the community
- to uphold the reliability and professional standards in service provision
- to ensure proper use of financial resources within the bureau (Paragraph 20(a) – (f), LegCo Paper)

While the list lays down the conventional duties of the administrative head of departments, the inherent problem of this arrangement is that permanent secretaries are now required to defend government policy before the LegCo and the public (Paragraph 20(a), LegCo Paper). Although it is still a controversial debate on whether political and administrative responsibility can be so easily demarcated, such stipulation surely defies the logic of a reform whose guiding principles include the upholding of political neutrality of the civil service.

It is indeed reasonable to impose a responsibility for the civil servants appear before the legislature, but their duties should normally be confined to information provision or response to factual inquiries instead of providing justification for government bills or policies. The duty to justify government decisions should be borne by politicians. However, for now, the permanent secretaries may not be able to enjoy the anonymity which should be protected by the principle of political neutrality. Instead of coining a clear delineation between political and administrative accountability, the line between the two remained blurred after the operation of POAS. The civil servants, at least among the layer of permanent secretaries, are now highly susceptible to politicization in controversial issues. (As a matter of fact, during the debacle of Article 23 and Harbour Fest, the senior civil servants had, voluntarily or reluctantly, shouldered the duties to explain policies and lobby for support from the legislature.)

In such case, the public would find it difficult to seek accountability as the politicians can shift the brunt readily to the civil service, while the permanent secretaries can protect themselves by the claim of political neutrality, even though they are conducting political tasks and mission actually. This problem will become manifest in issues of accountability related to department faults, blunders in public agencies as well as political tasks shouldered by the permanent secretaries.

Moreover, such arrangement raised the suspicion that political neutrality of the civil service would be ultimately compromised and the advice provided by the senior bureaucrats will become increasingly partisan in nature. Although Joseph Wong Wing-ping, by then the Secretary for the Civil Service, responded that the civil service will not be filled by “yes-man” due to the POAS reform (MingPao, 18 April 2002), there is no corresponding measures to guarantee that the civil service will not be so politicized gradually.

5.6 Lack of Informational Accountability

Finally, no institutional effort was made in the POAS reform to establish “a regime of freedom of information”, a quality which is emphatically specified by Dunn as indispensable to democratic accountability (Dunn 1999). The essence of such is to “maximize the degree to which politically consequential conduct by rulers and their subordinates is always in the open” (Dunn 1999, 339). As said in Chapter 2, without such free flow of information, citizens cannot know what is actually going on in the government, let alone make an informed judgment and provide meaningful oversight. Transparency of the government is the prerequisite of public accountability.

Indeed, government transparency is an even more fundamental constituent of accountability than the sanctioning mechanism. Government normally monopolizes the revelation of information, while unfavourable information is expected to bring punishment and undesirable political consequence against the government. Therefore, officials are inclined to block selectively from the public some information which may be detrimental to the reputation or normal operation of the government. Spinning or maneuver of public opinion can also work under the opacity of government actions. Therefore, informational accountability is also an important aspect that a proper organizational design of an accountability system should cover.

Rowena Kwok argues that the local discourse of accountability in Hong Kong has been concentrating exclusively on ministerial resignation and sanction imposition, while the importance of information accountability has been seriously neglected (Kwok 2003). The new accountability system provides insufficient statutory guarantee for the executive to be as open and transparent as possible in public administration.

Actually, the freedom to seek, receive and impart information was constitutionally guaranteed by the Article 19 of the International Covenant on Civil and Political Rights, a international convention which is incorporated in Hong Kong through Article 39 of the Basic Law of Hong Kong through Article as well as the

Hong Kong Bill of Rights. However, as Kwok notices, there was so far no attempt to materialize such guarantee by specific statutory effort. The government did not show any intention to institute some kind of freedom of information laws, while the officials were also reluctant to do so for protecting the privilege of government secrecy (Kwok 2003).

Right now, the legislature can order specific documents or call for the presence of particular government officials for enquiry under the Legislative Council (Powers and Privileges) Ordinance (Cap 382). However, the CE can block the admission of government document or record if such materials are related to security of Hong Kong or the responsibilities of the Central People's Government according to section 14. Moreover, the CE is entitled to bar public officials to testify by the vague concept of "security and vital public interests" as said in Article 48 of the Basic Law.

The POAS has done nothing in the aspect of explanatory accountability at all. It does not further empower the public as well as the legislature to demand information from the government. Informational openness can still only be secured by the tussle between legislature and the CE as well as the dedication of the mass media instead of institutional guarantee. It is still put at the mercy of the government officials.

Moreover, as Cheung points out, also there was no effort in improving the quality of exchanges between the executive and the legislature so that some kind of

deliberative accountability can be facilitated. The POAS provides nothing new in enhancing the competence of the LegCo in scrutinizing the government.

5.7 Conclusions

After going through the whole institutional analysis, the salient structural defects of this new accountability have been made quite apparent. Adopting the language of principal-agent model (Moe 1990a), the POAS framework provides insufficient structural incentive to induce the CE and the principal officials to enter into a genuine accountability relationship with the general public as well as the legislature. It portends a kind of weak accountability relationship, at least in the organizational sense.

The POAS reform can be regarded as a success in the objective to shift the political power from the administrative class to the Chief Executive and his close advisors. The POAS concentrates the policy-making power on the hand of the team of ministers, while the CE has now also monopolized the authority to handpick the senior officials in Hong Kong. No doubt it has somehow cleared the barricades for effective governance.

However, if we also adopt the evaluation criteria of whether the reform enhance the public accountability of the government, the close analysis in this chapter enables us to learn that solely “ministerizing” the layer of senior officials alone may not actually help, for such concentration of political power is actually working against the direction of accountability enhancement. The POAS is far from enough to solve the governance crisis and relent the public pressure for accountability.

Indubitably, the result of the POAS reform is to strengthen the personal rule. It has significantly empowered the CE and the principal officials without the introduction of corresponding measures of check and balance. Since the civil service is now subsumed under the new layer of political leadership, the traditional control of meritocracy and technocratic professionalism would very likely be eroded. The public and the legislature are not given any institutional means to exert influence on ministerial appointment or impose sanctions on principal officials at fault. In the absence of full democracy, election also cannot become an effective sanctioning means on the CE and the senior officials as in contemporary democratic regimes. Thus, the POAS has provided every institutional incentive for the government to weaken if not sever the link of accountability to the public and the legislature. The problem of representation and dual accountability add further troubles to the already problematic arrangement.

Without sufficient institutional control, the quality of governance now hinges more on the political leadership, charismas and competence of the political leaders, while public accountability can only be attained by the voluntary and benevolent initiation of the CE instead of institutional guarantee. The situation is further exacerbated by the reluctance of the CE to entrench true accountability practice. As shown in his speech, Tung incessantly showed his non-committal attitude by regarding public sentiments and legislative preference as the principal criteria in hiring and firing principal officials (MingPao 2 July 2002, South China Morning Post 2 July 2002)

Moreover, the accountability system provides insufficient institutional guidance in dealing with the potential crises of accountability. The Basic Law and the Code for the Principal Officials manage to provide clichéd description of ministerial responsibility, and the vague guidelines cannot offer additional assistance or requirements apart from those which have been practiced in Hong Kong for long. The problem of unclear delineation of political and administrative accountability has not been effectively solved also in this reform.

It is quite clear that the government did not try hard to fill in the context of “political accountability” or devise any institutional means to actualize it. Such structural deficit does not bode well for the smooth functioning of the POAS. For now,

Tung perceive accountability as the direct ministerial responsibility to him, while the democrats, which is comparatively mandated by the public, argue that such a responsibility should be owed to the people or representative institutions, i.e. LegCo. In order to hold the government accountable, the civil society and the legislature (limited to pro-democracy camp) are left with no institutional choice but to rely on political interaction and struggles. With the pressure for more accountability lingering on, the institutional deficit of the POAS to delivery genuine accountability would only result in the proliferation of political confrontation and altercation. The situation was further exacerbated by the forging of the governing coalition, which lacked sufficient social foundation and was devoid of representation. The likely victims are, unquestionably, social cohesion and political harmony.

Apparently, within the peculiar political setting in Hong Kong, ministerialization alone would produce further problems instead of remedy the existing ones. The POAS can neither enhance political accountability nor protect political neutrality of the bureaucracy. Burden comes with power. The CE may now build a team of political appointees as his firewall to assuage political pressure, but he now has to assume the ultimate blame formally if everything under his leadership goes wrong. He is in strong position to protect unpopular principal officials, but the accumulated public discontent will be diverted directly to him. The implication of the institutional deficit of the

POAS is rather simple: ministerialization must come with more fundamental institutional reform in Hong Kong.

Chapter 6 Path Dependence and the Politics of Political Accountability in Hong Kong*

This Chapter would take a twist in the analytical perspective. It would pick up the tools of political science instead of that of public administration and constitutional study in approaching the politics of accountability after the introduction of the POAS. Adopting the analytic tools largely from historical institutionalism and social constructivism, Chapter 6 tries to provide a better theoretical account of the vicissitudes of Hong Kong politics after the handover, and in particular, the failure of the POAS reforms.

It illustrates that the politics of political accountability is transformed from an intra-elite conflict between the ExCo and the civil servants, to a societal struggle between the ExCo and pro-government coalition on one side, and the marginalized democrats coupled with public sentiments on the other. Provided the peculiar political circumstances in Hong Kong and the nature of political responsibility, the POAS reform is bound to create interminable conflicts in a greater scale, broader scope and graver severity.

* Part of this chapter is extracted from the conference paper for the Annual General Meeting, Hong Kong Political Science Association on 8 May 2004.

6.1 Historical Institutionalism and Social Constructivism – Reciprocal Relationship between Structure and Agency

This chapter focuses primarily on the politics over the evolution of political accountability as a normative institution. Here, institution is defined as “collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations. The process involves determining what the situation is, what role is being fulfilled, and what obligation of that role in that situation is.” (March and Olsen 1989, 21)

Institution is resistant to change (North 1990). Political institution is a particularly resistant species (Pierson 2000). Once a political institution comes into existence, evolving from the point of “critical juncture” (Collier & Collier 1991), the political interactions that exist in the beginning moment of institutional formation have the capacity to set the institutional evolution into a particular developmental pathway. (Skocpol 1992). The intellectually interesting enquiries in analyzing institutional inception as well as change are thus, first, what lead to the “critical juncture”, and second, in what way the trajectories of future institutional evolution is constrained?

The impetus for institutional change is provided by the interaction of political actors within the institutional setting. The institutional context provides the “definition of interests and objectives” (Zysman 1994, 244), or, in a broader sense, some “culturally shared understandings and meanings” (Ferejohn 1991, 285) as guidelines of interaction between actors. Difference of goals and interest may appear between different political players, but their preferences are likely limited by the institutional setting.

However, it should be reminded that historical institutionalism does not negate the role of agency. Indeed, the recent theoretical development of historical institutionalism pays comparable weight to the power of agency in path-forming and -shaping process. Its proponents assert that political actors have their roles to play in the institutional evolution. Though their choices and strategies are somehow structured by the pre-existing context, political actors can intentionally shift the direction of path by their decisions and tactics. Moreover, the outcome of interaction between players will be fed back to the structural setting and trigger the institutional evolution along the developmental pathway. Overall, the study of institutional change is to “trace reciprocal and dynamic causal relations between institutional choices and institutional effects” and observe the “feedback over time, between day-to-day politics and institutional choices” (Jupille and Caporaso, 1999, 438). The structural

and agency factors become complimentary and largely mutually dependent in today's academic discourse in order to enhance the explanatory power of historical institutionalism. None of them is not privileged over another in tackling political development. (Scharpf 1997)

Political interaction is also significant in the formulation of social norms. Here, I turn my recourse to the theory of social constructivism in outlining the politics of accountability. According to classical social constructivist, the advent of norms is derived from the dialogic interaction between actors in the particular context. The roles of each person preset their conception on particular matters, and power relations determine the final appearance of the norms and institutions. Such subjective conception is transformed into objective norms after habitualization of such practices and the emergence of wide acceptance of such norms. (Berger and Luckmann, 1967)

These theoretical tools together provide a very good starting point in understanding the transitional politics in Hong Kong and the dynamics surrounding the POAS reform. Any proper understanding of the genesis of the POAS and the ensuing political dynamics necessitates an appraisal of the overall political context in which the system is bred and the interactions are structured. In this vein, a study of the political context of Hong Kong that provides the endogenous background for the politics of accountability is called for.

6.2 Endogenous Context for the POAS: Path of Hong Kong Politics

The post-handover constitutional framework of Hong Kong is solely crafted by the interaction and negotiation between the British and Mainland governments (Kuan 1991). The stakes and compromises raised in the Sino-British Joint Declaration were embodied in the Basic Law. The voices and concerns of the Hong Kong people were largely excluded. It is reasonable to comment that the Basic Law is largely a product derived from short-term concerns and political expediency instead of any commitment to entrench a long-enduring political system which can function congruously with the social and political context in the post-handover Hong Kong.

The mistrust and suspicion of the Chinese government during the Sino-British negotiation left their vestige in today's Hong Kong politics. The defensive mentality of the Central Government after the Tiannamen Incident had guided the latter progress of the Basic Law drafting and led to many subsequent changes. The HKSAR political system is somehow transplanted from the colonial system. It retains capacious measures of authoritarianism element. Public political participation is largely restrained, while popular elections become insignificant in forming the

government or affecting the policy directions of the government. The development of party politics is halted, while the politically neutral CE is supported by the loyalty and meritocracy of the civil service.

Meanwhile, after the blueprint for democratization was put into practice by the Basic Law, Hong Kong is heading for the direction of full democracy in the coming decades. The popular election of CE and the Legislative Council is guaranteed in the Basic Law, though, according to Annexes II and III its introduction will be contingent on the “actual situation” of Hong Kong, an ambiguous and loosely defined concept which is subject to various interpretation. However, after successive experience of direct elections before and after the handover, the electoral accountability mechanism in Hong Kong becomes fledgling and will continue to develop. In short, Hong Kong is marching towards the direction of democratic accountability and controlled government. The urge for democracy and political participation is destined to be a formative force of Hong Kong politics.

Such awkward blend of authoritarian and democratic components within the same political system did not bode well for the political stability of Hong Kong after the handover. As Yash Ghai indicates, democratic mobilization of politics is unlikely to be shunned off, while the stability of the administration is very doubtful. The

“internal contradiction” of political system would undoubtedly bring political struggles which are beyond the capacity of the HKSAR government to solve. (1999)

The coexistence of authoritarian and democratic components does not necessarily produce political stability, as experience of transitional politics in other countries shows. However, the Chief Executive Tung Chee-hwa, as a political novice, had to face a series of extraordinarily daunting tasks right after the handover. As convincingly summarized by Lau, they are the

“institution-building and re-setting of the political rules of the game in the wake of Hong Kong’s transformation from a British colony to a Special Administration Region of China, re-building the social contract in the SAR in a context of de-industrialization, diminishing economic security and declining public confidence in the untrammelled capitalist system, re-positioning between Hong Kong and the mainland after the end of the colonial rule in accordance with the principle of “one country two systems”, restoring public respect for and trust in political and social authorities which have been in secular decline, enhancing public confidence in the government amidst rising public skepticism of the political abilities of the civil servants, mastering a political system where multiple institutional and political actors coexist and vie for influence and coping with a political situation where mass politics has raised its head.” (Lau 2002, 21)

The internal reconfiguration of political order already seems to be an insurmountable challenge to the Chief Executive who is deprived of party affiliation as well as stable political support. The China factor and the intricacy in formulating the unprecedented “one country two systems” model further complicated the situation.

The political framework did not function as it was intended originally. As Ian Scott forcefully argues, the post-handover political system is a disarticulated one in a sense that different institutions and actors pursue their own agendas and fight for the political dominance (2001). The following quotation from Scott is particularly telling:

“The Executive Council was unable to transform itself into a body that could exert political control over the civil service. The bureaucracy attempted to reassert its former predominance. The Legislative Council sought to retain and enhance the means by which it held the civil service accountable. And civil society in Hong Kong, far from being cowed into passive acquiescence, maintained its vibrancy... As a result, the interactions between the institutions which made up the system were either weakened or continued to be fractious” (Scott 2001, 36-37)

In short, Hong Kong is still in search of a stable political order that is widely accepted. The political order is still in the state of flux, and it is subject to major adjustments. This has provided the structural foundation, or, in the parlance of historical institutionalists, the “endogenous context” (Thelen & Steinmo, 1992) that provides the historical dynamics for the emergence and, alas, calamity of the POAS.

6.3 POAS: Two Phases of Institutional Evolution

6.3.1 Phase 1 - Birth of the POAS: Intra-elite Struggle for Dominance

6.3.1.1 The Legacy of Bureaucratic Government

Though the focus of this chapter is on the failure of the POAS, the researcher finds it necessary to illustrate the inception of the POAS and put it in the theoretical framework mentioned above.

The bureaucratic dominance in public administration, which is an important product of the Sino-British colonial era, contributed significantly to the genesis of the POAS. For more than a century, the power of policy formulation was monopolized by

senior civil servants under the leadership of the governor appointed by the British Government. Hong Kong was dubbed “an administrative no-party state” (Harris 1978, 53), in which politicians and party politics had no role to play during the colonial era.

In devising the political framework of post-handover Hong Kong, China’s wariness of democratization and the conservatism shared by influential business tycoons toward the possible upsurge of welfarism led to a restricted version of democracy in the Basic Law (So 2000). Party politics is largely restricted. In order to provide the foundation of an executive-led political setting spearheaded by a Chief Executive who will not be popularly mandated, China had to turn recourse to elsewhere. Given the need to maintain the status quo on one hand, and the reluctance to gravitate too much towards the business sectors on the other, sustaining the civil-service-led system thus became a viable and appealing option to the Beijing government.

As stipulated by the Basic Law, the major holders of political and administrative power after the handover would be the Chief Executive and the bureaucracy. (Art 48, 62, Basic Law) The Legislative Council, advisory bodies as well as pressure groups can only play a peripheral role in policy formulation and government formation. (Kuan 1999). However, since the Chief Executive lacks the support of a popular mandate and political party, as Cheung points out, he unavoidably has to rely

exclusively on the civil servants for policy advice and thus particularly vulnerable to the bureaucratic capture. (Cheung 1997).

The Chris Patten's political reform increased the pace of democratization in Hong Kong and enhanced the element of public participation in the legislature. While senior government officials was given more extensive discretion in areas under their portfolio, the emergence of popularly elected councilors in the LegCo posed unprecedented political pressure on the bureaucracy as a whole. These together culminated into an inevitable politicization of the principal officials. They had to transform themselves into *de facto* politicians in order to cope with the rise of mass politics and vigilance by the democrats.

Concurrently with Patten's democratization and decolonization project, we saw a gradual adoption to the norms of public accountability on the part of the civil service, albeit through administrative but not political means. Starting from the nineties, the administration has underwent a series of reform in order to maintain the legitimacy of the civil-service rule before an increasingly vibrant and politically active civil society. The introduction of customer-oriented culture in the delivery of public service as well as the pledge of prompt response to citizens' demand can be duly regarded as a *de facto* formulation of the civil service towards the goal of responsiveness and responsibility. Though the issue of accountability was never put to agenda in the

colonial administration, the administrative reform towards a responsible government must be taken into account as the advent of accountability practice in Hong Kong. The reform also fundamentally heightened the expectation on the quality and accountability of the civil service.

The Civil Service Reform in 1999 was also a significant step towards public accountability. The vision of cultivating a proactive, accountable and responsible culture within the bureaucracy is specifically stated in the reform blueprint (Civil Service Bureau 1999). It is argued that the call for stronger sense of responsibility, the nurturing of a performance-based and service-oriented management culture as well as the enhancement of quality of service further extended the colonial practice, strengthened the public expectation for public accountability and partially structured the policy options which are available to the Chief Executive.

6.3.1.2 Internal Tension: “Presidential” Leadership vs Meritocracy

The Handover can be duly regarded as an external shock to the path of political accountability development in Hong Kong. The problem of bureaucratic rule would not be brought to the forefront while the struggle between political leadership and civil service would not become pressing so quickly but for the new constitutional setting brought by the Handover and the Basic Law.

Right after the Handover, we witnessed the intra-executive struggle between the civil servants on one hand, and Executive Council, comprising Tung and his close advisors, on the other.

The civil service assumed an indispensable position in Tung's governance. Cheung observes that there were two competing paradigms for the so-called "executive-led" system within the government. The civil servants favoured a bureaucrat-led system, while Tung and his supporters wanted to lead a more presidential style of executive, so that political leadership of the Chief Executive can replace the bureaucracy as the dominant force in public governance (Cheung 2002). Civic Exchange, a local policy think-tank, notes that Tung and his close advisors prefer a style of executive government that resembles the operation of a private corporation. (Civic Exchange, 2002) Public officials, whose careers were largely built on traditional values such as incrementalism and meritocracy, apparently did not share such governing scruples.

Tung had a hard time with the civil service during his first term of office. Deepening rift could be easily discerned between the ExCo and the bureaucracy led by the Chief Secretary for Administration Anson Chan Fong On-shan after the handover. Reports that senior civil servants privately complained about the ignorance to civic service of the Chief Executive and his advisors abounded. The bureaucrats

often regarded the general interest of society as their dominant concern. They regarded the duty to give honest advices on public policies as their top priority, even if the opinions may contravene with the personal preference of the executive. The close advisors of Tung, however, viewed these as signs of disrespect and obstructionist proclivity. They often openly blamed the bureaucracy for hindering the Chief Executive to exercise effective leadership, and even use this to account for Tung's disappointing performance (Interview with Cheng Yiu-tong, March 2004).

Nevertheless, bureaucratic dominance was rather secure because of the control of information in policy formulation enjoyed by the civil servants as well as the lack of countervailing forces in society (such as political parties, academic institutions and research foundations) (Kuan, 1999). The virtually monopolized access to critical information in policy formulation and instruments of implementation has put the bureaucracy in a much advantageous position over the Tung and his allies (Lau 2002). Tung was losing his leading edge, let alone control, over the administrative vehicle of the HKSAR government. At the same time, the ExCo failed to act as a body which could exert control over the civil service in a quasi-ministerial setting. The ExCo members were left with the roles of prominent but powerless advisers (Scott 2001).

6.3.1.3 The Erosion of Performance Legitimacy of the Civil Service

The civil service, however, was plagued by a series of policy blunders. In 1997, the Avian Flu outbreak unleashed a wave of public panic. The government reacted slowly and the subsequent massacre of poultry was handled sloppily. In 1998, after its ceremonious opening, the operation of the new Hong Kong International Airport ended in cataclysmic chaos. Due to various technical problems, flights were delayed and countless cargos of fresh goods went perished. Anson Chan eventually apologized for the chaos before the LegCo. In 2000, defective pilings were found in several public housing blocks under the management of the Housing Authority. The government announced that these substandard buildings would be demolished. The scandal resulted in the prosecution of several housing officials and the call for resignation of relevant personnel. Public trust on the civil service waned. Skepticism on the quality of public governance soared. Yearning for more public accountability grew. Since public officials were somehow insulated from public pressure by the guise of political neutrality, most public discontent was directed to Tung himself.

6.3.1.4 The POAS: Reassertion of Executive Dominance

It was an open secret that there were covert disagreements between Tung and his deputy Anson Chan. The conflicts became more and more noticeable, and eventually culminated into the voluntary resignation by Chan in 2001. However, her departure did not materially remove the impediments for Tung to truly carry out his leadership.

With a strong bureaucratic force holding both political and administrative power, Tung Chee-hwa undoubtedly lacked the necessary political clout to govern. The “critical juncture” was finally reached when Tung needed to overcome this bureaucratic hindrance and reassert the executive dominance. While the civil service also encountered an efficiency crisis and accountability deficit, the intra-elite dynamics finally produced a consensus among the political elites that reforming the existing the government framework was inevitable (Cheung 2002).

One official objective of the POAS is to enhance the accountability of the government. However, it is no secret that, behind the rubric of accountability provided by the HKSAR government, the POAS reform is also aimed at usurping the political and policy formulating power vested in the bureaucracy. By forming a cabinet filled by political appointees, the executive is able to retrieve policy formulation power and contains the influence of the civil servants within the confines of administrative arena. The Chief Executive can now handpick close working partners who really share similar governing ideologies. Several principal officials

admit that the lack of a ruling cabinet which can assist the political work of the CE is one major reason for introducing the POAS.

In a nutshell, the genesis of the POAS resulted from the intra-elite struggle between the bureaucracy and the ExCo. The historical legacy of the bureaucratic government as well as the start of accountability practice through administrative means provided the structural context for the struggle, while the political actors played a part in shaping the subsequent institutional inception of the POAS according to the incongruity between the urge for asserting strong personal leadership and the principles of meritocracy and bureaucratic dominance. The POAS reform was initiated by the reassertion of executive dominance.

6.3.2 Phase 2 – Vicissitudes under the POAS: Societal Struggle for Norms of Accountability

The intra-elite struggle for dominance was supposed to be terminated by the POAS reform. However, the end of this internal tussle is only the omen of a greater and graver political turbulence. It is submitted that the POAS has indeed provided the avenue for the political actors and society to contest over the norms of accountability,

i.e. the relationship between the government and the general public as a whole. The stage has been set for an internal struggle escalating to a societal level.

According to the Legislative Council Paper prepared by the Constitutional Affairs Bureau, under the POAS, principal officials will now “be accountable to the Chief Executive for the success or failure of matters falling within their respective portfolios. They will accept total responsibility and in an extreme case, they may have to step down for serious failures relating to their respective portfolios. These include serious failures in policy outcome and serious mishaps in the implementation of the relevant policies. They may also have to step down for grave personal misconduct or if they cease to be eligible under the Basic Law. (Constitutional Affairs Bureau 2002, paragraph 12) It is postulated that principal officials are now duty bound to shoulder political responsibility for their performance and policy portfolios.

6.3.2.1 The Nature of “Political Responsibility”

The government has provided the sketch of answerability and political accountability under the POAS. The problem, however, lies in its application. It is submitted that, because of the nature of “political responsibility” and “political

accountability”, any specific formulation of criteria in deciding when accountability mechanism should be evoked is highly unsatisfactory, if not impossible.

John Dunn points out that successful operation of political accountability requires the existence of some reasonably clear norms which can help define the ambit of political responsibility bore by the public officials (Dunn 1999).

If we perceive political accountability as an institution, the norms of accountability should be divided into two dimensions – first, the scope of responsibility and answerability of the agents, and second, the situation in which accountability mechanism should be evoked and particular sanctions should be imposed by the principals.

For the first part, as widely believed, the ambit of political responsibility is largely contingent and dependent on the standard widely endorsed by the community at a particular time. The illustrations of various scholars lend support to this proposition.

March and Olsen, the doyens of new institutionalism, employ the concept of “logic of appropriateness” (1984) to analyze accountability in democratic governance. They argue that the operation of accountability is based on the logic of consequence and logic of appropriateness, and the latter means that the behaviours and decisions of

public officials are assessed on “its consistency with cultural and political norms and rules.” (1995, 154).

Woodhouse once illustrated that the context of individual ministerial responsibility is always determined by political factors in addition to constitutional aspects (1994). Political interaction between actors within the constitutional framework is crucial in determining the scope of political responsibility and accountability.

For the second part, as shown in the experience of British and Canadian ministerial system, practices of political accountability is indeed ever-evolving, and its details are always defined by the development of indicative precedents. It should be noted that accountability practices in both places come from unwritten constitutional conventions. (Marshall 1986, Heard 1999)

As Mark Philp states, political accountability “*concerns the answerability of the politicians and public officials for their conduct in office. The issue is not whether someone acted within their legitimate powers, but whether they exercised those powers in ways that the political bodies to whom they are accountable – such as Parliament or the electorate – can endorse*” (2001, 360). Therefore, we can see whether accountability should be evoked depends on the political judgment of the public and the legislature.

In short, given its inherent nature, it is rather apparent that the operation of political responsibility and accountability is bound to be fraught with contestation.

6.3.2.2 The Lack of Institutional Guidance in Hong Kong

In Hong Kong, the concept of “political accountability” is glaringly absent from any official record or document of the government (Poon 2001). The POAS is indeed an avenue for this concept to come into play in the platform of Hong Kong politics. However, as Cheung Chor-yung (2003) rightly points out, the POAS “is highly inadequate in terms of providing political and institutional guidance for enhancing ministerial accountability, and there is a lack of developed constitutional conventions to assist policy makers, politicians and the public to deal with issues related to ministerial responsibility” (263).

Obviously the government did not pay effort in devising contingency plan for crisis concerning political accountability. Both the Code for Principal Officials and the Basic Law provision provide no clues, not even the roughest guide to fill the void of the concept “political accountability” in Hong Kong. Accountability exists in rhetoric without any real substance. The Basic Law and written regulations do not provide any structural guidance to the players in scenarios of political blunders and

scandals, while no precedent is of any assistance. Therefore, the POAS reform put the political actors in Hong Kong into a context in which the future rule of game is determined by evolution and their interactions. Adopting the social constructivism approach, the norms of accountability will thus be largely shaped by interactions between political actors.

6.3.2.3 The Structural Divide of Mass and Elitist Politics

In Hong Kong, the co-existence of elitist and mass politics persists after the handover. The business and industrial elites tried hard to protect their stakes in the political systems (for instance, weighted representation in the legislature and the privileged position in the election of CE) under the ethos of “prosperity and stability”. They maintain their power base in the functional representation in the legislature, which merely acts as a substitute of the elite appointment system in the past. Politicians from mass politics, on the other hand, need to adopt populist policies to salvage electoral votes in the geographical constituency election to ensure their access to the legislature. Such division is a historical product from the Sino-British negotiation, and such pattern is likely to persist unless the system reaches a point at which sufficient force appear to overcome the institutional inertia. The division of

elitist and mass politics inevitably cultivates different conceptions on political accountability among political actors in Hong Kong and has shaped the dynamics of the conflict over “political accountability” after the inception of the POAS.

Before the handover, an “unholy alliance”, which consisted of the government, the business elites and the patriotic force, emerged in tackling the surge of the populist alliance of politicians which represented the middle class and the grass-roots population (So 2000). Such power-sharing setting was further institutionalized by the POAS through the appointment of James Tien Pei-chun and Jasper Tsang Yok-shing, the chairman of the Liberal Party and the Democratic Alliance for the Betterment of Hong Kong respectively. Such move heralded the beginning of adversarial coalition politics in Hong Kong, while the democrats in the legislature were virtually marginalized as a minority force.

Politics is the result of disagreement over goals and disparities in power. Political institutions often have the ability to entrench or amplify such power disparities (Knight 1992). It is submitted that, because of such path dependence, the POAS necessarily sharpens the conflicts between the government and pro-government elites on one hand, and the institutionally marginalized democrats on the other hand. Due to the rather amorphous nature of the concept of “political responsibility”, the new system entitles different political actors to articulate their conception of political

accountability in order to win a strategically advantageous position to indeed shape the rules of accountability. Thus, after a year of operation, we witness the perpetual struggle of two distinct and irreconcilable articulations of “logics of appropriateness” in the political arena of Hong Kong. The dysfunctional political system proffers no solution to resolve the conflicts, while the adversarial coalition politics introduced by the POAS intensifies rather than relents the antagonism.

6.3.2.4 The Societal Tension: Efficiency vs Populist Vision of Accountability

The stakes of the government and the pro-government elites on the whole POAS reforms lie in the enhancement of efficiency of public governance and the minimal change to the political system. The government needed to maintain the unity of the governing cabinet, so that the executive can work better, public officials will not be severely hampered, while potential business and industrial elites will not be scared off to pursue political career in the future (Interview with Doris Ho and Lau Siu-kai, March 2004). The pro-government elites in the LegCo also need to contain the upsurge of the democrats in the assembly to avoid their vested interest from being deterred. Therefore, they inclined to articulate a softer version of “political

accountability” in which enhancement of government efficiency and protection of systematic integrity are the dominant ethos.

Furthermore, the CE has to, on one hand, pander to the business interest in their socio-economic policies, and, on the other hand, need to pay heed to the wishes and instructions of the Central Government in the controversial political issues. Thus, the CE is disinclined to stray from the concerns of stability (business sector) and defensive mechanism (the Central Government) in developing his version of “political accountability”. This conflict of dual representation and accountability left the CE with little room to compromise with the democrats.

Whereas, the democrats tried to assert a populist form of “political accountability” on the government. Indubitably, the POAS has heightened public expectation and widened the gap between what people demands and what the government can really deliver in terms of political accountability. The government is incessantly confronted with the challenges by an increasingly vibrant society. The democrats tried hard to shape the discourse of public opinion in fighting for a harsher form of accountability standard. The mistrust towards the government and the need of more rigorous answerability to the public (via the legislature) can be perceived as their guiding ethos.

Although the democrats were deprived of political clout within the legislature, the escalating anti-government sentiment after the introduction of the POAS provided them with the golden opportunities to manipulate the social sanctions at their disposal, shaped the discourse of public opinion, and eventually transformed public grievance into support for imposing a higher standard of accountability on the government.

In this regard, this paper attempts to use three political incidents that happened in the first year of operation of the POAS to highlight various visage of conceptual incongruity of accountability between two camps as well as the political struggle of the two distinct “logics of appropriateness”.

6.4 Illustration: Three Political Incidents

6.4.1 Penny Stocks Incident: the Debate on the Extent of Vicarious Responsibility

6.4.1.1 The Incident

Nobody, possibly including the democrats, would expect the first litmus test to the POAS would emerge just three weeks after its inauguration. The Penny Stocks

Incident (or Penny Stock Fiasco), which stormed the financial market in late July 2002 as well as political auditorium in subsequent weeks, provided a very good starting point for analyzing the politics of accountability under the POAS. The situation is particularly intriguing as the leading actor of the farce, the newly-appointed Secretary for the Financial Services and Treasury (SFST) Frederick Ma, comes from the business sector instead of civil service.

The Incident came out of the blue. It was instigated by a consultation paper prepared by the Hong Kong Exchanges and Clearing (the HKEx). On 25 July 2002, the HKEx issued the Consultation Paper on Proposed Amendments to the Listing Rules Relating to Initial Listing and Continuing Listing Criteria and Cancellation of Listing Procedures (the Consultation Paper) for public consultation. The Consultation Paper provided a host of suggestions on market reform. One of the proposals was to cope with the problems associated with the so-called “penny stocks”. The HKEx proposed that shares of listed companies that are traded below fifty cents for thirty consecutive days should be consolidated, failing which, after possible appeal procedures, de-listing may ensue.

The implication of such proposal was far-reaching. With half of the shares in the market falling into such category, this reform, if implemented, would manage to transform a sizeable of trading stocks into wastepaper. To make things worse, the

Consultation Paper did not provide any exit mechanism for small shareholders to trade the penny stocks at hand in case they were de-listed. Given that penny stock market were always volatile and no protective measure was put forward, the announcement of the Consultation Paper sparked a wave of panic selling of penny stocks by the small shareholders the next day. The stock market thus dropped precipitously. On 26 July 2002, 577 out of 761 stocks listed on the Main Board recorded a loss, with the leading victim witnessing a price freefall of 88%. 66 stocks recorded a decline of 20% or more, and a total amount of HK\$10.91billion vapourized from the stock pool in just one single day.

Two days after such a massive plummet in stock market, the HKEx, together with its supervisory body the Securities and Futures Commission (SFC), decided to withdraw the proposal concerning the regulation of penny stocks. However, havoc had been wreaked. It was time to trace which parties should be held responsible for the whole fiasco.

6.4.1.2 Vicarious Responsibility

The Penny Stocks Incident raised a profusion of issues in stock market regulation, public governance as well as the three-tier structure regulatory structure between the

government, the SFC and the HKEx. However, one key issue pertaining to the inquiry of political accountability has yet to be resolved – to what extent should the SFST and the Financial Secretary, who are politically appointed to implement overall financial policies, should be vicariously responsible for the alleged faults committed by departments under their supervision?

In order to facilitate the discussion, it is desirable to review some previous discussion of vicarious responsibility. It should be reminded that classical doctrine of ministerial responsibility in Britain and Canada stipulates that a political appointee should be entirely responsible for all departmental faults committed by the civil servants under its leadership, no matter he has prior knowledge or not. The classical adage, “a minister is responsible for every stamp stuck on an envelop” vividly illustrates the principle. Nonetheless, modern public governance renders such austere version of vicarious responsibility highly undesirable, if not untenable. The complexity and extensive ramification of government structures make it impossible for ministers to be accessible to all information about his departments. The prevalence of contracting out, outsourcing of public service and devolution of government authorities to public managers also trigger the mushrooming of new public agents and blur the division of responsibility between the government and these new autonomous entities. The extent of vicarious responsibility is still a controversial issue. Normally,

it is believed that vicarious responsibility, unless falling into the gravest type, should not entail ministerial resignation (Woodhouse 1994). In the end, it depends on the actual delineation of powers between politicians and administrators – civil servants, autonomous entities, public organizations or quangos – particular institutional settings as well as the political judgment of the society and critical actors involved in particular systems.

The Penny Stocks Incident is a case in point. Strictly speaking, the HKEx and the SFC are not similar to departments under the Bureau of Financial Services and Treasury. Although they are situated within the hierarchical framework under the Bureau (and hence the supervision of FS), they possess certain extent of autonomy in formulating policies with respect to market regulation. How should the scope of individual ministerial responsibility be defined and which fault should be ascribed to Frederick Ma, as well as Antony Leung, remained a contentious issue to be determined after the fiasco.

6.4.1.3 The Cleavage in the Legislature

It was reasonable for the public to be furious about the sloppy management of the consultation as well as the insensitiveness to market response by particular

officials, including the SFST and FS. Besides their strong reproach, various organizations and unions of stockbrokers also planned to launch campaigns to seek the explanation and apology from relevant personnel involved, with the Chief Executive of the HKEx Kwong Ki-chi and the Chairman of the SFC Andrew Sheng as the leading candidates.

The government made the first public response before the media three days after the Incident. Ma, Kwong and Sheng unanimously claimed that the Incident was caused only because of the public misunderstanding of the proposal in the Consultation Paper. They denied any fault on the part of the government, and did not intend to offer any apology for the fiasco. Surely, the stock broking sector was far from satisfied with such reply.

In the realm of political accountability, the government adopted similar protective attitude. The next day after such public response, Antony Leung openly defended Ma by emphasizing the fact that the HKEx did not try their best effort in informing the Bureau of Financial Services and Treasury the proposal and its implications. On another occasion, Ma conceded that the manner by which the proposal was announced was problematic. However, he did not participate in its formulation and was only informed of the Consultation Paper the day before its announcement. (MingPao, 30 July 2002)

The democrats wasted no time to leap at this opportunity, ride on the public rage and assert political pressure on Ma and Leung. In a special meeting of the LegCo Panel on Financial Services on 31 July 2002, the cleavage between the pro-democracy and pro-government camps became so manifest for the first time. We saw the interesting dissection of lawmakers, with the democrats tried to put the blame on the two political appointees involved, and the pro-government ones defended the ruling cabinet by shifting the blameworthiness on the HKEx and the SFC.

More important to our enquiry is that the two sides articulated significantly different visions of vicarious responsibility. For the democrats, they espoused a kind of vicarious responsibility which is similar to the traditional doctrine. This could be reflected by some indicative comments and questions raised by particular members in the prolonged meeting. Chairman of the Democratic Party (by then) Martin Lee Chu-ming criticized both FS and SFST for their incompetence in supervising the HKEx and SFC. He argued further that even Ma stated that he was not informed about the proposal to de-list penny stock, such lack of knowledge is not sufficient ground to leave him exonerated from political responsibility. Chan Wai-yip also admonished Ma, questioning whether Ma and Leung should remain in office.

The democrats also managed to capitalize on the disappointing performance from Ma in the meeting. Being a political novice, Ma demonstrated his inexperience

in dealing with the potentially flustering scrutiny by the legislature. Encountering a torrent of harsh questions from the democrats, he admitted that the SFC had sent a summary table of the Consultation Paper to him on 17 July 2002, some days before the fiasco. However, he failed to notice when he needed to rush out for dinner appointment and then his short departure to England. He further added that papers and files in his office “were piling up like a mountain” and he “could not possibly have read every document”. (Enquiry Report, para 9.20 and 9.21) Such slip of tongue was extremely damaging to the public perception on his competence as a minister. Such quotation succeeded in gaining large coverage of report, as well as satire, in the media. The democrats continued to criticize Ma by this new piece of information. The case that Ma should be held indirectly responsible for the fiasco was clearly established.

The pro-government LegCo members apparently did not agree with such stringent version of ministerial responsibility. During the meeting, James Tien challenged the democrats for infusing economic issue with politics. Tsang Yok-shing praised that Ma had acted promptly, and argued that because the Consultation Paper did not need to be approved by the government, SFST should not bear any responsibility in this matter. Chan Kam-lam even criticized the democrats for arguing the wrong issue in the meeting. They just need to discuss on the Consultation Paper and the proposal but not the POAS. (MingPao, 1 August 2002)

6.4.1.4 Inquiry Panel and the Report

The democrats subsequently urged for establishing an independent investigation panel to examine the Incident. Tung indirectly denied this demand by authorizing the FS to set up a two-member inquiry panel, comprised of Robert Kotewall and Gordon C K Kwong, to probe into the fiasco. The panel submitted the Report of the Panel of Inquiry on the Penny Stocks Incident (the Report) in mid September. I find it necessary here to briefly remark on the conclusions of the Report and its inference on political accountability.

As the Report states clearly, the inquiry should not be taken as a fault finding exercise. (Paragraph 31, Executive Summary of the Report) The Report thus mainly remained in the technocratic level and devoted most of its part in resolving the administrative issues pertaining to the Incident. Oddly, however, two chapters of the Report are particularly allotted to the discussion on political accountability. A fair assessment would tell that the Report serves to create further muddle instead of clarification on the concept of vicarious responsibility.

In Chapter 6, the Report attempts to outline a clearer picture on the content of ministerial responsibility, and in particular, their responsibility over executive

departments. The panel members think that one of the main duties of the principal officials is to “oversee the delivery of services by the executive departments under his purview and to ensure the effective implementation and successful outcome of policies.” (Paragraph 6.10, the Report) Nonetheless, for the Penny Stocks Incident, the case was not that black-and-white. The Report came to a decision that, under the three-tiered regulatory structure, neither the HKEx nor the SFC should be regarded as “executive departments” under the purview of the SFST in conventional sense. (Paragraph 6.12, the Report) However, at the same time, it is difficult to assert that the work of both institutions fall outside the policy portfolio of the SFST. As said in the Report, the Secretaries of Bureau should be “accountable for matters falling within their policy portfolio and in extreme cases, they are responsible for all aspects of their portfolios. (Paragraph 6.11(c), the Report).

The panel members try to resolve this dilemma by creating a tailor-made typology of political responsibility under the POAS in Chapter 12. Though they acknowledged their lack of sophistication and expertise in this aspect, the members suggest four broad categories of responsibilities that would be legitimately expected to the FS and SFST, namely policy, executive, systemic and personnel responsibilities. (Paragraph 12.16, the Report) Moreover, the FS has at least a political duty to “find

out what happened, and, if necessary, to consider questions of blame and responsibility. (Paragraph 12.21, the Report)

Originating from such somehow arbitrary typology, the Report exonerates both the FS and the SFST from political responsibility for the whole Incident. Leung was clearly misinformed and should not be held responsible for the Incident, as well as for his wrong statement that the HKEx did not notify the Bureau of the Consultation Paper before its announcement. (Paragraph 12.22, 12.24, the Report) Despite his sub-par performance before the LegCo Panel meeting, it was judged that Ma had not failed in the discharge of his ministerial responsibilities also. The Report reiterates his hectic schedule, the lack of geographical connection with his Bureau staff, and the fact that Ma was still acclimatizing to the new working culture and logistics of the government as the mitigating factors. (Paragraph 12.27, the Report).

The inquiry was supposed to be fact-finding exercise and limited to administrative issues. It was inappropriate for the Panel to make judgment on these constitutional and political questions, which necessitates the input from the Government, LegCo and the public as well (Cheung 2003). Moreover, the Report argues that the content of “political responsibility” largely depends on “a territory’s history, politics, constitution, constitutional conventions, political sophistication and the system of government” (Paragraph 12.13, the Report). Following from such

rationale, the judgment made by the Panel, which was neither a part of the government nor local politics, would not be authoritative in any sense. It would be self-contradictory for the Panel to make judgment with authority to exculpate the ministers involved from potential liabilities. Needless to say, similarly, it was improper for the government to regard the remarks as authoritative.

The typology of political responsibility is equally problematic. At the outset, as Cheung points out, such categorization is far from complete. With respect to the Penny Stock Incident, it clearly misses out the responsibilities of oversight and the vicarious responsibility for departmental faults which are under his purview (Cheung 2003). The most troubling feature, I submit, is that the typology shows insufficient regard to the actual political situation of Hong Kong when the POAS is implemented. As a newly designed system, one of the official aims of introducing the POAS is to enhance the overall accountability of public governance. One of the perennial problems of public governance in the pre-POAS era was the reluctance for senior officials to shoulder political responsibility for department faults within their administrative vista. Many crises of public accountability prior to the introduction of POAS were also related to the operation of non-government departments and the failure to provide effective monitoring on the part of the government. Thus, in determining the scope of ministerial responsibility under the new accountability

system, it would be rather peculiar or even insensible for the panel members to omit this crucial aspect. The Report does not spend a word on the issue of vicarious liability, and it even neglects the fact that Ma may have to bear a individual ministerial responsibility to oversee both the HKEx and the SFC. (Paragraph 12.27, the Report) Overall, the Report makes a contentious political judgment which should not be made by the Panel, and ignore the issue of vicarious responsibility of which the Panel should clarify.

Although the Report candidly relieved both Ma and Leung of potential political responsibilities, the public was surely not contented with their evasive attitudes in handling the incident and public enquiry. The matter ended with Ma's apologetic bow before the mass media, possibly driven by escalating public pressure instead of any formal reprimand.

The Penny Stocks Fiasco highlighted the conceptual difference of accountability between the two camps in Hong Kong politics. Such incongruity created the first headlong struggle for accountability in the local political setting. A clearer delineation between political and administrative responsibility was still found wanting.

6.4.2 Car Buying Scandal: the Fight on the Severity of Personal Misconduct

The Car Buying Scandal (or the Lexigate Incident), which erupted right after the announcement of the Financial Budget, presented the government with an arduous task to tackle. As one local newspaper vividly portrays, the incident posed a “key earlier test” for the merit of the POAS (South China Morning Post, 9 March 2003). It forced the government to face squarely a question which has been evaded for long: how severe a personal misconduct would necessitate a ministerial resignation?

6.4.2.1 The Incident

The incident assaulted the government all of a sudden. Once again, the mass media showed its power of being a public ferret. The new Financial Budget, which was announced in early March, stipulated a steep rise in the vehicle registration taxes. The price of luxury vehicles would inflate significantly if such measure was ratified. A few days later, a local mass-market newspaper revealed a piece of shocking news that set the scene of the subsequent upheaval. On 9 March 2003, Apple Daily reports that the Financial Secretary Antony Leung Kam-chung (by then) had bought a

new luxurious car² for \$790,000 in late January. The price of the car would rise to \$840,000 due to the increase in registration tax.

Though it was commonly believed that such \$50,000 advantage would only be an innocuous amount to Leung, people questioned why Antony Leung, who was himself an experienced and successful banker before joining the government as the finance chief, would be so insensitive to the potential conflict of interest as well as possible public perception arising from this purchase. Such revelation established the prima facie case for tax avoidance purpose in such earlier purchase. Antony Leung was suspected to have manipulated insider information about the government financial policies, which would be inaccessible to him but for his public duties, for his personal benefits.

On the next day, reporters flocked to Leung's mansion for an explanation from the finance chief. He openly admitted that he should avoid such purchase, but tried to divert the impending diatribe by emphasizing that the car was needed to cope with the need of his newborn daughter. As a proof of good faith, he also donated the doubled amount of such discrepancy (i.e. \$100,000) to charitable organization.

Nonetheless, such initial response enraged instead of pacifying the public. Leung's popularity rating sagged precipitously, as shown in various public surveys.

Since the model of the car is Lexus 430, the whole incident was also dubbed "Lexigate Incident" accordingly.

On the other hand, we see a clearly discernable cleavage among the Legislative Councillors in their reactions towards the whole event. The pro-democracy camp had been, as usual, extremely critical towards the whole drama. They urged for an immediate investigation on the incident, and some democrats even commented that such a purchase was an apparent breach of the Code for Principal Officials. Emily Lau, the convener of the Frontier argued that the government should form an independent investigation commission. Yeung Sum, the chairman of the Democratic Party, filed a letter to the Constitutional Affair Panel to call upon Leung's appearance before the LegCo. The seed for political polarization had been sowed at the outset.

On the next day after Leung made his explanation, Tung openly criticized his financial chief, claiming such car purchase as "inappropriate" and "negligent". However, he decided not to punish Leung as he thought that sanction was utterly unnecessary. Such mild response further incensed the democrats. They admonished the government for its lack of commitment to uphold accountability, a promise clearly made together with the implementation of the POAS.

At this moment, the pro-government camp performed the role of staunch defender of both Tung and Leung. James Tien Pei-chun, Chairman of the pro-business Liberal Party, claimed that the whole incident had nothing related to dishonesty or personal integrity. It was just a pure case of negligence. Cheng Yiu-tong, another

member of the revamped Executive Council, also supported Leung by the reason that he had offered satisfactory explanation on the whole event. He regarded Leung as only careless, and carelessness did not deserve resignation (MingPao, 12 March 2003).

The pro-government politicians were joined by a host of prominent mainland officials and Beijing advisors such as Gao Siren and Tsang Hin-chi. The remark of Tsang is particularly telling. "Hong Kong people should not spend too much time on such petty issues. Our urgent task is to revitalize our economy" (South China Morning Post, 11 March 2003). It somehow showed that the pro-government ally values the imperative to bolster the economy over the quest for political accountability.

The democrats took a step further by calling upon Leung's appearance before the Panel of Constitutional Affairs for four matters - 1. chronology of the whole events; 2. the reason why he did not report the purchase; 3. whether the matter is related to his personal integrity; and 4. if there is any breach of the Code for Principal Officials (MingPao, 12 March 2003). Independent councilor Chan Wai-yip, meanwhile, launched a signatory campaign urging the resignation of Leung. A police official, who was once investigated for similar alleged receipt of private interest, also lodged a formal complaint to the Independent Commission Against Corruption (ICAC).

Pro-democracy coalition and the civil society has somehow manipulated almost all the available manoeuvres at their disposal in the quest for public accountability.

The whole incident took another twist after the Chief Executive publicized an open letter in response to the earlier letter of resignation filed by Leung on 15 March 2003. It was reported that Leung had made the decision to resign on the day right after the controversial purchase was revealed. However, Tung refused to sanction the resignation. In his open letter, despite admonishing Leung for his “gross negligence” and the conspicuous breach of the Code for Principal Officials under the POAS, Tung concluded that Leung had no intention to evade tax because of his decision to leave the previous high-paying position in bank to join the government. Moreover, Tung regarded Leung’s earlier offer to resign as an “honourable act” and came to the conclusion that Leung’s mistakes warranted a formal criticism but not resignation. In the letter, Tung particularly emphasized that Leung should devote his best endeavour in the economic transformation process, as well as the lobby for support for the pending budgetary proposal. At the request of Tung, Leung made a public apology but decided to withdraw his request for resignation.

Again, we witnessed the fact that pro-democracy and pro-government councilors actually espoused two distinct visions of accountability. Expectedly, the open letter attracted another wave of criticism from the pro-democracy camp. Besides criticizing

Tung's formal criticism as being too late, Democratic Party chairman Yeung Sum also criticized Tung as too protective. Lee Cheuk-yan from Frontier said it was wrong for Tung to praise Leung as honourable, and argued that he should have accepted Leung's offer of resignation. Independent councilor Chan Wai-yip argued that despite Tung's request to remain office, Leung should have insisted to resign in fulfilling his apology and remorse to the public. (South China Morning Post, 16 March 2003; MingPao, 16 March 2003) Audrey Eu, independent LegCo member and a senior counsel, summarized the attack from the pro-democracy camp succinctly: "Willingness to assume public office should not be a consideration in this matter. It is the severity of the alleged conduct and the integrity of the particular officials that matter." (Apple Daily, 16 March 2003) Obviously, the democrats did not regard Tung's formal criticism as proportionate sanction for Leung's misconduct. They would probably not be satisfied with something less than ministerial resignation.

On the contrary, again, the pro-government elites thought that the matter should rest and the government should move on. They were contented with Leung's apologetic attitude as well as his explanation for such suspicious purchase. Yip Kwok-him of the DAB even criticized the democrats for urging Leung to step down. He argued that there should be some balanced views in society which are not as radical as to call for Leung's resignation. (Apple Daily, 16 March 2003) There is a

huge difference in the proportionality of sanction in the conception between two camps. The existing political institutions and power configuration failed to provide any channel to mend the rift.

6.4.2.2 The Turning Point

The drama reached its climax when Leung appeared before the Panel of Constitutional Affairs for the public enquiry. On the day before his appearance, a piece of shocking (if not devastating) news was leaked to the mass media. It was reported that, in the Executive Council meeting on 5 March 2003, two ministers, the Secretary for Health, Welfare and Food Dr. Yeoh Eng-kiong and the Secretary for Constitutional Affairs Stephen Lam Sui-lung, had indeed immediately declared their car purchases after Leung announced his plan to increase vehicle tax. However, Mr Leung was reported to have remained silent, without declaring his car purchase in similar fashion.

In consequence, the struggle for accountability was moved to another battlefield. Such rumour, if true, would establish a prima facie case against Leung for deliberately concealing the luxury car purchase. Strong enquiry was put forward before Leung. He must now explain such peculiar behaviour was due to carelessness instead of

dishonesty. The matter further festered after the government confirmed, probably reluctantly, that Dr. Yeoh did make an unequivocal declaration during the meeting. Leung's integrity was now placed in serious doubt. The crisis loomed large. The sparkles now set out a political furore that could no longer be easily smothered.

During the first appearance before the LegCo to account for the matter, Leung conceded that he failed to declare the purchase on numerous occasions, including the meeting in which Dr Yeoh reportedly declared an interest in the new vehicle tax policy. However, he remained defiant that it was only a negligent mistake made under pressure. He asserted that his love for his wife and new daughter had "made him blind" and hence, to make such a serious mistake. (South China Morning Post, 18 March 2003)

Besides its impact to the so-called notion of cabinet confidentiality, this startling revelation and Leung's subsequent response further magnified the attitudinal and political cleavage between the two camps of lawmakers in the LegCo. The new fault-line is along the issue of informational accountability. Pro-democracy camp unreservedly criticized the "closed-door" nature of the whole inquiry by the CE, and they urged for setting up a formal and independent panel to probe into the matter. Emily Lau Wai-hing even claimed that, without a proper investigation of the matter, such internal inquiry is disrespect to the rule of law. Moreover, they demanded that

the government should reveal the details of the Exco session held on 5 March 2003.

They even suspected that there may be attempts to hide the scandal.

Encountering squarely a barrage of questions and demands from the democrats, the government refused to both requests. The Secretary for Constitutional affairs Stephen Lam Sui-lung replied that the government did not intend to hold further investigation because Tung had already made careful scrutiny of the whole matter according to the code of conduct under the POAS. Moreover, due to the principle of confidentiality, he declined the demand to reveal any record of that ExCo session except Leung's part.

Lam's response was partly supported by the pro-government coalition. Although the proposal of disclosing details of the Exco meeting gained considerable support from the Liberal Party, the pro-government elites thought that it was unnecessary to set up an investigation panel. Chan Kam-Lam from the DAB even criticized the democrats for their ulterior purpose to sweep Leung out of office. He said that the whole matter should be put to an end. Hui Cheung-ching from the Hong Kong Progressive Alliance also argued that we should move on and focus on the new Financial Budget. (MingPao, 18 March 2003) Independent councilor Eric Li Ka-cheung shared the same philosophy. He said that because of the dire economic situation, they should adopt a lenient attitude towards the whole matter. (MingPao, 19

March 2003) As expected, the motion to set up the panel was flatly defeated by the pro-government majority in the LegCo. In April, another attempt by the democrats to set up a Select Committee, by invoking the Legislative Council (Power and Prerogative) Ordinance, was also voted down. It shows the drastic difference in conception on what should be the appropriate rigour of answerability between the two camps.

6.4.2.3 The Vote of No-confidence

Margaret Ng Hoi-ye, the councillor from the legal sector, tabled a motion of vote of no-confidence against Leung, the third one after the Handover. The motion was once again blocked as, under the separate voting mechanism, it failed to secure a majority among the groups of functional constituencies and Election Committee, which were occupied mostly by pro-government councillors. However, the 3-hour debate indeed manifested the irreconcilable division between efficiency and populist vision of accountability between the two camps again.

The democrats now called for Leung's resignation in no ambiguous term. After a series of piecemeal revelation of truth, they asserted that the credibility of the financial chief was severely derogated. The public no longer confided in Leung's

integrity that he will not abuse the information available to him as the FS. The incident also damaged the legitimacy of the government, they claimed. Harsh comments were put forward before Leung. Lee Cheuk-yan said that “in terms of credibility, he (Leung) is a negative asset owner”. Cheung Man-kwong argued that integrity is something that cannot be compromised. Leung must go in this case. They also paid no heed to the government’s concern about the difficulty to find a replacement. Audrey Eu argued that we should be able to find a replacement. If Leung remained in office, it would mark a very bad example that public officials do not need to be cautious in handling affairs about their integrity. (Apple Daily, 8 May 2003)

In parallel with the democrats’ attack, pro-government lawmakers used a host of reason to defend Leung. The major rationale is the urgency to tackle with SARS. They argued that we should concentrate our effort and energy to deal with the contagious SARS instead of this incident. The vote of no-confidence would just worsen the political instability that was plaguing Hong Kong. Secondly, they stated that if such critical attitude was adopted against every public official, incentives would further diminished for people to join the cabinet, which is already devoid of sufficient political talents. Thirdly, they claimed that the matter is just a matter of negligence, and should not be raised to a level of dishonesty. They even took

seriously Leung's pledge to learn the lesson and serve the HK community with more dedication.

Eventually, Leung's office was sustained, albeit only for a longer while. Clearly, the public discontent failed to be channeled to the political institutions.

6.4.3 Sloppy Handling of SARS: the Delineation of Political and Administrative Responsibility between Principal Officials and Civil Servants

6.4.3.1 The Incident

Just as the government was floundering amid public pressure in the Car Buying Scandal, the more detrimental threat, in both medical and political sense, was yet to come. Atypical pneumonia, or commonly dubbed Severe Acute Respiratory Syndrome (SARS), launched its unstoppable onslaught on the healthcare system and social order of Hong Kong in the spring 2003. It was believed that the epidemic first appeared in Guangzhou, insidiously treaded into Hong Kong, and eventually culminated into a global outbreak.

While SARS has caused inconceivable damage worldwide, Hong Kong and China have borne most of the brunt. We suffered from the most widespread infection and the heaviest mortality. In Hong Kong, it was particularly disheartening to learn about the death of several medical staff who got infected when performing their duties. The SARS ravaged Hong Kong, infecting 1755 people and creating a death toll of 300. The damage to the economy of Hong Kong was particularly enormous, with tourism and hotel industry being the leading victims. The revival of our economy was effectively brought to a juddering halt. Besides, the international image of Hong Kong was severely blemished and we were virtually quarantined by the international community.

Natural disasters often entail political consequences in modern politics. The case holds true in Hong Kong. Although it was widely accepted that SARS was a kind of new epidemic which was able to frustrate all the available curative and preventive measures, this mere fact could not help the government dodge the public dubiety about their ability in handling the whole crisis. Compared with decisiveness in neighbour Asian countries which were also hit by SARS, the sloppiness and ineptness of HKSAR government in containing the outbreak were just made too noticeable.

Despite the calamity of SARS could partly be ascribed to the inherent institutional problems of the public medical service, for example, the over-investment

of resource on curative over preventive measures, bulky bureaucratic structures and poor coordination among different departments, it was rather difficult for particular public officials to evade the ultimate question of political accountability for the whole incident. There were many actions or non-action in which the issue of political responsibility arose. They will be discussed briefly in the following.

6.4.3.2 Administrative and Political Blunders

The glaring blunder of the government was its poor judgment of the whole outbreak. At the outset, it seemed that the government only realized the seriousness of the SARS outbreak belatedly. And it was being accused for playing down the seriousness of the plague, possibly in order to protect the reputation of the Mainland, when it showed signs of contagion in both places.

It was believed that the government had deliberately withheld information about SARS from the public. For example, in February, in responding the public worry about the unknown disease in Mainland, the Secretary for Health, Welfare and Food Yeoh Eng-kiong openly claimed that “there is no need for people to panic”. He even questioned whether there was “any outbreak at all” in Guangdong (South China Morning Post, 12 February 2003). Later report revealed that the HKSAR government

should have been informed about the dire situation of SARS in China as early as in late January.

Doctors and nurses started to fall prey to SARS in early March, and the number of infection started to climb. The medical professors also discovered signs of contagion from hospitals to the community by that time. Yet, Yeoh remained defiant before the public that, “as far as we know from all the reports that we have, this is still not an outbreak” (South China Morning Post, 18 March 2003). In the evening of the same day, however, Dean of Medical School of the Chinese University of Hong Kong Professor Sydney Chung Sheung-chee warned the public, in tears, that the disease probably spread to the community. Such remark was in a complete contrast to what was said by Yeoh. Chung even disclosed before the media that the figures of infection announced by the government were only limited to medical workers. The infected people of the community were left out from the statistics indeed. Subsequent development of the disease proved that Chung’s warning was wholly justified. Yeoh had underestimated the severity of the crisis. His remark was just completely wrong.

Two possible reasons may explain why Yeoh, who was himself a renowned doctor in the medical profession, would make such an unprofessional judgment. First, it may be due to the urge to avoid panic, so the government had to conceal any information which may trigger public paranoid. The second reason was that he

genuinely made a mistake about the severity of SARS. Either way, both situations would point to the issue of political accountability – the former about informational accountability to the citizens, the latter about his competence as a political appointee whose major duty is to manage public medical services.

The government was also slow, if not reluctant, to disclose the latest development about the epidemic. The mass media thus played an important role during the outbreak. The mass media tried their utmost to find out crucial information about SARS and kept the public informed of the latest development of SARS, so that people could adopt relevant precautionary measures. The government originally refused to disclose the information of the buildings where cases of SARS was found. Four citizens thus used their spare time after work to establish a website to enlist the residential buildings where SARS patients live in and forewarned people who live nearby.

The over-complacency, conservative attitude, together with an over-confidence on the medical system, may have accounted for why the government was outpaced by the development of the plague. The response of the government was intolerably slow as compared to other countries. It took the government weeks to realize the emergency of the situation and announce a series of corresponding actions. The hospitals were bereft of sufficient protective gears for frontline medical staff. The

government only considered the use of quarantine measures on 26 March 2003, a month after SARS had already appeared and spread for a month. The quarantine measures for the Amoy Garden, a site which accounted for nearly half of the total infection as well as death by SARS, only came when nearly half of the residents had fled. On the Fools' Day, a teenager in Hong Kong fabricated a rumour that Hong Kong was declared an infected port, and it successfully triggered a panic buying. The government was only able to dispel the rumour in the evening. The measure of body temperature check on departing passengers also came as late in mid-April.

While the civil society showed its vibrancy in tackling with the seemingly insurmountable challenges, the inability for the government to take charge of the situation was so utterly exposed. Hong Kong suffered from unbearable costs from the outbreak. Even SARS receded in the summer, public grievance and fury lingered. The public accused the government for complacency, incompetence as well as secrecy, which together had worsened the harm of SARS. Political parties and public organizations started to urge for the government to bear responsibility for its poor performance in crisis management, as well as a string of wrong decisions or non-action in this incident of life-and-death.

6.4.3.3 Post-SARS quest for accountability before the July 1

Demonstration

The post-SARS quest for accountability was again a political struggle between the governing coalition and the democrats, fueled by public sentiments. After SARS showed the sign of relenting, the government again faced a torrent of public pressure for upholding accountability. The pressure mounted on major officials which were involved in the overall campaign against SARS, namely Dr Yeoh, Director of Health (by then) Dr Margaret Chan Fung Fu-chun, Hospital Authority Chairman Dr Leong Che-hung and Chief executive William Ho Shiu-wei. There were even calls for Yeoh and Chan to assume the responsibility and resign.

However, the government remained defensive before the calls for accountability from the public. Permeating the government's post-SARS responses and strategies was once again the strong tint of obsession with efficiency or stability. Providing accounts or sanctioning under-performing officials were never the focus or consideration of the government as SARS dissipated. It refused to identify a single scapegoat for the unsatisfactory performance, and resolutely shunned off the urge for Yeoh or Chan to step down. They regarded preventing the next outbreak as more imperative than the pursuit for accountability. Such priority of missions was made

particularly obvious when Tung repeatedly emphasized his wish to retain the integrity of the team of medical services after the ravage of SARS.

It was further echoed by Yeoh's dismissal of calls for his resignation. He said that under the POAS, his performance was constantly assessed by the CE. "People died of Sars. We are all sad and we feel the responsibility. But if the chief executive finds me at fault, there are procedures in place whereby he can ask me to resign or decide on other punishment. It is the chief executive's decision, not mine" (South China Morning Post, 29 May 2003). He also reiterated the importance for him to stay in the office, assimilating the lessons learned and contributing his experience in the next stage of campaign against SARS. (MingPao, 30 May 2003)

In order to pacify the pressure for accountability from the disgruntled medical sector and the public, the CE decided to appoint a SARS Expert Committee at the end of May 2003. The Committee, to be chaired by Yeoh originally, comprised of eleven experts from the medical and public health sectors from both Hong Kong and foreign countries. The missions of the Committee were to conduct reviews on the work of the Government in the management and control of the outbreak, examine the capabilities and structures of the healthcare system in Hong Kong, and to identify lessons to be learnt, as well as make recommendations to improve the system for any future outbreaks. (SARS Expert Committee Summary Report, p.1) In short, it was a

professional and institutional review instead of a political enquiry. In Tung's word, "the team's aim was not to point fingers. It was more important to learn from experience and be better prepared for a similar crisis in future." (South China Morning Post, 29 May 2003)

The democrats and the frontline medical staff were of course enraged by the response from the government. They slammed the decision to appoint Yeoh, who was himself heavily involved in the decision-making in tackling SARS, to head the investigation of the medical system as condoning a brassy case of conflict of interest. It was worried that evidence of administrative or political faults on the part of the government would be filtered and never be excavated before the public (The doubt that "Dr Yeoh is investigating Dr Yeoh"). A few democrats also argued that solely appointing medical experts, who may be fixated with the healthcare perspective, may not be helpful to the overall fact-finding missions or improvement in public administration (MingPao, 29 May 2003).

Chairman of the Democratic Party Yeung Sum thus tabled a motion to set up another investigation committee which was independent from the SARS Expert Committee in the House Committee on 30 May 2003. It triggered another confrontation along the line of accountability within the legislature.

The DAB and the LP, two major parties in the pro-government coalition, did not show support for such motion. Chairman of the DAB Tsang Yok-shing thought that it was a bad timing to set up another investigation. The legislature should let Yeoh and SARS Experts Committee to look into the outbreak first, rather than to hinder their work by setting up an unnecessary investigation committee (MingPao, 29 May 2003). Moreover, medical workers and policymakers might be disinclined to provide information for fear of subsequent reprisals if such committee was established. This would hinder the fact-finding mission of the Experts Committee. (South China Morning Post, 31 May 2003) Though LP Chairman James Tien Pei-chun agreed that Yeoh should not head the review committee, he also believed that LegCo members lack expertise knowledge in healthcare, and should not be in the position to probe into the matter. If the government had already appointed Yeoh as the Chairman, it was better to confine his role as facilitator of investigation. (South China Morning Post, 31 May 2003)

On the other hand, the democrats showed another example for manipulating the public grievance to lobby for support for accountability measures. During the motion debate, DP member Fred Li Wah-ming recited a letter which was written collectively by a group of residents of Amoy Gardens. It strongly criticized the appointment of Yeoh as the chairman of the SARS Experts Committee, and urged for another

independent investigation. Basing on such letter, Li went further to argue that the LegCo should support the motion in order to “give justice to the victims and those who lost their loved ones during the outbreak”. (South China Morning Post, 31 May 2003) Michael Mak Kwok-fung, legislator for the health services constituency, followed similar rhetoric. “The pro-government groups should vote by conscience, and give justice to the more than 200 people who died of SARS.” (MingPao, 31 May 2003) Margaret Ng Ngoi-yee also based her argument on the need to uphold justice, claiming that such a serious incident deserved an independent, open and thorough investigation. (South China Morning Post, 31 May 2003)

It is particularly interesting to learn the stance of Lo Wing-lok, the legislator for the medical sector. Being a periphery figure of the pro-government Breakfast Group, he is frequently criticized by medical groups for being too conservative and protective towards the government policies. However, Lo assumed an active role in pressuring the government for a more rigorous SARS investigation. The motion from Yeung Sum indeed came after Lo proposed the establishment of a select committee in the House Committee in the capacity of the chairman of the Health Services Panel. It was wholly understandable as the medical profession suffered the most painful cost and grievance in the SARS outbreak, and it was not unreasonable for the sector to be furious about the manner by which the investigation was conducted. With the interest

of his constituency being severely deterred, Lo was no longer insulated from his electorate and had to respond to this sudden upsurge of sentiment. The extraordinarily strong pressure possibly drove Lo to temporarily abandon pro-government mentality and adopt a more responsive approach in the politics of SARS investigation. He even commented that Yeoh should resign for the grave human and economic loss due to the mishandling of SARS in a public occasion. (MingPao, 18 July 2003)

In order to avoid a defeat of the motion, Yeung Sum eventually proposed a concession of the bill in an attempt to accommodate the concern of the DAB. The motion now asked the government to set up an independent commission of inquiry once the SARS Experts Committee had accomplished the investigation in September, failing which the House Committee would again decide whether to do so on their own. With DAB concurred and LP together with some independent members abstained, the motion was eventually passed. However, the concern for efficiency still triumphed over the yearning for accountability. People died. Economy tumbled. Still, no one was formally held responsible for the crisis. (For the sake of conceptual coherence, the situation after the release of the Investigation Report by the LegCo will be discussed in the epilogue after Chapter 8 instead of here.)

6.5 Conclusions

The politics of political accountability is path dependent in a sense that the remnant of the Sino-British negotiation still left its imprint on the fight for a leading role in shaping the norms of accountability in Hong Kong. This also accords with the observation by historical institutionalists that political institution is seldom a conscious design but merely a reflection of the particular confluence of political interactions at the time of its formation (Thelen 1999).

The design of POAS does not square with any contemporary notion of accountability in democratic theories or political debates. Accountability must be buttressed by a regime of free information, institutionalized means to demand accounts, as well as the power to impose sanctions, e.g. resignation, impeachment, in cases of political misjudgement or personal misconduct. If we study in greater details the whole POAS reform, it becomes more apparent that our government is still devoid of accountability.

The POAS does not provide political actors with the least possible guidance in dealing with situations in which policy blunders and personal misconducts arise. Actors are thus fighting for the power to interpret this politically flexible and nebulous concept. The internal struggle for dominance was converted into the

contestation on the norms of accountability in the societal level. The politics of interpretation triggered even direr political struggles and competitions in shaping the norms of accountability. The CE, principal officials and the pro-government elites espoused a top-down approach of governance, in which conservatism, stability, efficiency and security of the power base were the dominant ethos. Opposing to the governing coalition we found the marginalized pro-democracy camp, which launched a bottom-up drive for openness, transparency, answerability and political responsibility to the public.

The difference in expectation on what the POAS should deliver was so wide that it was unrealistic to crave for mediating initiatives. These two inherently conflicting principles culminated into two distinct forces in the fight for interpreting the proper norms of accountability. The confrontation was further reinforced by the structural partition of Hong Kong politics into elitism-based and mass-oriented ones. The division of mass and elitist politics in Hong Kong renders reconciliation difficult, if not impossible.

The norms of accountability are normally and largely formed by political judgment. As shown above, the norm-formulating process under the POAS was riddled with rivalry between two camps of lawmakers. The imperative to protect the new cabinet on one hand, together with the need to canvass political, and also

electoral, support by appealing to public sentiment on the other, have greatly contributed to the diminishing room for constructive deliberation in formulating the norms. In modern politics, political stability is a matter of neat balance between confrontation and cooperation. When it comes to the politics of political accountability in Hong Kong, confrontation dominates and room for cooperation shrivels though. At the end of the day, political interactions did not lead to any consensus on norms of accountability, let alone long-coveted concrete constitutional conventions of public accountability. As stated in previous chapters, the operation of political accountability entails the delicate balance between the government's capacity to act and public participation. However, the three cases studied in this chapter reveal that administrative expediency always triumphed over the urge for accountability from the democrats in the politics of accountability. Such balance is far from attained.

The wrong path has been chosen at the outset. The existing arrangement must therefore produce endless follies and conflicts. The combination of historical legacy (endogenous) and the ensuing strategies of the actors (exogenous) thus generating interminable contestation over the norms of accountability after the introduction of the POAS. A series of blunders and scandals also triggered the outburst of anti-government sentiments and gradually undermined the merit of the POAS reform. These events spawned the accumulation of widespread discontent as well as hostility

towards the government. It is indeed reasonable to conclude that the struggle on “political accountability” contributed significantly to the unprecedented July 1 demonstration, in which 500,000 citizens came out to express by their feet their anger towards the government.

Thus, if we examine clearly the political setting of Hong Kong, it would be sensible to predict that the POAS reform is doomed to failure. It is plagued by the lack of institutional guidance and the public approval, while embedding in the existing historical configuration and political-social context must send the development of the POAS into a wrong track. The debacle of the POAS indeed can be perceived as a miniature of the predicament of the Hong Kong politics as a whole.

Chapter 7 Reconstruction of conception: Interviews with Political Elites

After analyzing the structural deficit of the POAS and the path-dependent nature of the politics of political accountability in Hong Kong, we turn to the last part of the trilogy. Chapter 7 intends to reconstruct the conception of political accountability held by the elites who are mostly involved in the POAS reform and present their potential relevance to the institutional design of the POAS as well as the ensuing political dynamics.

7.1 The importance of political conception

The actions of political actors are often guided by their understanding and values about the political world. In any event, unless all alternatives are filtered out by structural constraints, a political actor would have to pursue a particular course of action among the available choices according to his consciousness, internalized norms or rational calculation. He must ground the decisions on his aspired beliefs, values as

well as ideologies. These mental elements, which are roughly summarized as “political conception”*, are crucial and should not be taken lightly.

The following quotation from Robert Dahl is particularly telling: “Political activists and leaders are more likely than most other people to have moderately elaborate systems of political beliefs, to be guided in their actions by their political beliefs, and to have more influence on political events, including events that affect the stability and transformation of the regimes.” (Dahl 1989, 261) Beliefs and orientations often play a paramount role in transformations initiated and sustained by political elites.

Once acquired, political cognition and conceptions are hardly to be changed. Since political arena is a murky environment that is characterized by high complexity and opacity (Moe 1990b), once a political orientation is briefly entrenched, actors are heavily biased in the filtering of information during the maturing process of such orientation (Arthur 1994). Therefore, actors tend to reinforce their particular political ideas and filter out information which may provide ground for refutation. In this light, Pierson (2000) forcefully argues that political conception is subject to “increasing return” – “basic outlooks on politics, ranging from ideologies to understandings of

* It is imprudent if not impossible to provide an accurate and widely-accepted definition for the term “conception”. Dictionary meaning – the sum of a person’s ideas and beliefs concerning something (Merriam-Webster) - does not offer much recourse to us. Therefore, I adopt the listing offered by Dahl (1989) – “beliefs, ideas, ideologies, or culture” – as a loose definition of “conception”.

particular aspects of governments or orientations toward political groups or parties, are generally tenacious” (260). An earlier empirical study even shows that this phenomenon is both applicable at individual and group level (Wuthnow 1989). If these propositions stand, studying the conception held by political actors can provide us with a reasonably reliable guide to study and speculate dynamics and interactions in political arena. This observation is particularly important to a political system that is in its fledgling stage.

The initial framework of political order of post-colonial Hong Kong was determined by the interaction between Chinese and British governments. The general public of Hong Kong had no say in it (Kuan 1991). Mass participation is continuously shunned by the constitutional constraints imposed by the Basic Law. Election, which is the most direct means to channel public preferences to the government in Hong Kong, is also insignificant because of its inability to influence government formation and policy direction (Kuan 1999). As mentioned before, the evolution of political system in Hong Kong is largely a product of intra-elite dynamics. According to Anthony Cheung, the POAS reform is of no exception. It is largely motivated by the demands for change raised by elites who were discontented with the bureaucratic dominance. Popular demand or pressures from the legislature play just minimal part in this reform (Cheung 2002).

As argued in the preceding chapter, the whole POAS is still in its formative stage, while the norms of political accountability are far from clear and well defined. The whole system is susceptible to further modification and moulding. With the absence of vertical accountability mechanism, the public can only resort to weak horizontal mechanism as well as virtually ineffectual social sanctions to exercise their influence on the government. The continuous development of the system will still be largely driven by the elites being co-opted in the system. Since the elites are in the position to shape Hong Kong's political system, or in Dahl's parlance, are "mostly involved in politics."(Dahl 1971, 127), to understand their beliefs and conceptions would be extremely essential in the study of Hong Kong politics.

Moreover, political-actor-oriented study is also an under-explored area in Hong Kong. It is equally true in the academic discourse on accountability in Hong Kong. The post-handover literature on political accountability in Hong Kong comes from two streams. One type falls into the category of public administration, which is mainly blunders-driven and aims at providing practical advices to improve the situation (See Lee 2000, Lo 2001, Cheung 2002). Another branch is a normative discussion on the design and implementation of the political accountability system. No empirical study has ever been conducted to study how the political elites who were involved in the POAS reform think and influence the whole process.

Reforms need to be initiated and put forward by agencies. By studying meticulously the conception attributes of these elites, one should be able to find additional clues why the POAS is so framed and designed. Thus, it is the researcher's belief that such perspective can provide complementary materials for the academic discourse on the politics of accountability in Hong Kong, and can enrich the political studies in Hong Kong.

7.2 Methodological Issues of Elite Interview as a Research Method

This Chapter thus serves as an ambiguous attempt to study to elicit the political conception of the people who are mostly involved in the POAS reform. The major research method adopted is elite interview. This study adopts the method of elite interview. Before delving into the discussion of the content of the interview, however, certain discussion must be first imparted to the issues arising from elite interview as a research method and potential criticism against this particular branch of research methodology.

Elite interview differs from normal interviews in a sense that it requires a number of additional considerations and techniques. It is not an exaggeration to

regard interviewing political elites as “both an art and a craft” (Peabody et al 1990, 451).

Goldstein identifies three basic goals for conducting elite interviews in political studies. First, it can gather information from a sample of officials or political figures so that researchers can make generalizable claims about the characteristics or decisions of those people. Second, it may discover, for future enquiry, particular pieces of information, by deliberate questioning as well as by surprises or enable the researcher to get hold of particular important documents which are not accessible to others before. Last, it may guide or supplement other works that use alternative sources of information and data. (Goldstein, 2002)

Elite interview particularly suits the purpose of studying the attitude, values and beliefs of a group of renowned figures in the society. Interviewing elite enables the researchers to formulate the contextual understanding on the targets’ mindsets and reasoning behind their actions. By carefully studying, and deconstructing if necessary, the answers and dialogue, investigators can “gauge subtle aspects of elites views of the world” (Aberbach and Rockman 2002, 673) and figure out “the parameters that guide[d] their definition of problems and their response to them.” (Aberbach and Rockman 2002, 674). In this specific type of study, researcher should examine carefully the contextual nuance of difference responses, and then dig deeper to sketch

the underpinning thinking paradigm and logic of reasoning. (Aberbach and Rockman 2002).

The merit of elite interviews lies in the ability to elicit the rich context from the interviewees' elaboration and argumentation on particular topics. Conventional beliefs suggest researcher to ask more open-end questions instead of closed ones in conducting the elite interviews. First, closed-end questions restrict the room for targets to elaborate their own ideas, while open-end ones enable the interviewees to speak more freely and provide more insight before the researchers decide to ask those more closed-end ones. Second, it can help enhance the validity of the answers. Instead of imposing the conceptualization of the researcher, open-end questions provide the chances for elites to organize and articulate their answers within their theoretical framework, so that interviewer bias can be reduced. Finally, elites normally prefer to articulate their views, sometimes with fervour, and present their thoughts clearly before the interviewers. Open-ended questions allow them to do so. (Aberbach and Rockman 2002)

Moreover, as Dexter long reminds, political elites who are well-informed and influential in politics are seldom too willing to accept the assumptions by which the interviewers start with. They are probably keen in explaining to the researchers how they analyze the situation, and pointing out the real problems that are related to the

topic of study (Dexter 1970). To be more realistic, “the interviewers confronted with genuinely prominent people or the prestigious well-informed is unlikely to feel that he can insist on their hewing to a standardized line of discussion.” (Dexter 1970, 6)

On the other hand, nonetheless, researchers must be extremely cautious about the issue of validity and reliability when they obtain the raw materials from the interviews. Though qualitative interviews can transcend the obsession of statistical accuracy demonstrated by some discipline such as psychology, as Berry remarks, if the interviewers do not pay immense attention to this methodological issue, the “error term” in elite interviews can easily cross an unacceptable threshold” (Berry 2002, 679). This issue is particularly noteworthy in elite interviews, as political elites normally have a stronger disposition to be loquacious, straying from the designated research focus, and ducking those harsh or difficult questions. Moreover, their eloquence may also affect the researchers’ understanding of the matter, as we would, by instinct, give more weight to a more persuasive discourse on the subject matter. These dilemmas are summarized by Berry as “the paradox of elite interviewing” – *“the valuable flexibility of open-ended questioning exacerbates the validity and reliability issues that are part and parcel of this approach.”* (2002, 679)

The format of qualitative interviews can be briefly categorized into three types: fully structured, which is similar to survey method, semi-structured and unstructured,

or journalistic (Peabody et al 1990). The distinction between the first two was explained ably by the following quotation from Huitt and Peabody, “a structured interview is characterized by a carefully designed interview schedule, a set of questions that are always asked in a particular order, and often, a high proportion of questions that have a fixed or closed response”, while “a semi-structured interview allows more opportunity for probing and gives the respondent considerable freedom to expand on a given question” (1969, 28-29)

There are pros and cons for choosing among structured and semi-structured formats of interview, putting the researchers in dilemma. Structured interview benefits from the fixed ordering of questions and thus can ensure a great reliability in the research tools, i.e. the standardized questions. However, it diminishes the room for elaboration and flexibility to handle the interviews. Sometimes, it may not be possible or desirable for the researcher to ask every question in the same sequence. Elites are normally busy, and they value their time highly. Short interviewing period may not permit the interviewer to handle each interview with the same manner. Moreover, sometimes the elites will jump from topic to topic during the interview, and it would be more appropriate for the researcher to jump the ordering a bit and ask questions which would be more relevant at that moment. While unstructured approach may result in a lack of coherence and focus in the interview, semi-structured interview is

often believed to be the most desirable format in holding elite interviews. As Beth remarks, “if one can provide detail, depth, and an insider’s perspective, while at the same time allowing hypothesis testing and the quantitative analysis of interview response, semi-structured interviews with open-ended questions may fit this course.”

(Leech 2002, 665)

Selective sampling and low response rate often pose another great problem to studies which involve elite interviews. Since it is difficult for ordinary researchers to get reach of prominent political figures, let alone conduct comprehensive interview, the response rate is normally very low. Therefore, selecting the appropriate sampling frame will be very essential, as generalized claims about a certain group can remain robust with a low response rate if only there will not be significant divergence between attitudes of respondents and non-respondents (Goldstein 2002).

The attitude in conducting elite interviews should be fundamentally different from that of normal ones. For normal interviews, the researchers would define the questions, and then look for answers which would be within the confines framed by his presupposition. More flexibility is permitted for qualitative type of interviews, though researchers may somehow need to be guided by the logic behind the research. For elite interviews, though researchers still need to ground his observation in the

pre-condition theoretical framework, we also yearn to let the interviewees teach us about the issue in question (Dexter 1970)

Elite interview is more difficult to be handled in a sense that you have to extract as much information as you can during the limited time. Of course, it is imperative to conduct extensive research on the background information of the interviewees before the interview. Moreover, similar to other interviews, the rule of thumb for elite interview is to gain the rapport first. Beth provides certain reminders and tips. The key point is to put the interviewees at ease. The researcher should look professional and sophisticated, but “less knowledgeable than the respondent on the particular topic of the interview (Leech 2002, 665). One should try to avoid threatening descriptions or unpleasant remarks at the outset, and can reiterate the confidentiality of the material and as well as protection of anonymity if necessary to forge the sense of security. As a conventional skill, one can address questions about personal background or daily life (Leech 2002). It is also helpful to observe the setting of the office, and search for some mementoes which may serve as a good starting point for the interview.

Researcher should set the list of questions clearly and be versed in the logic and ordering of them. He must be prepared to change the ordering of the questions according to actual situation, but manage to get back to the temporarily skipped

enquiry. He must also allow the targets to fool around in his answers, but occasionally corral them back to prevent the discussion from going astray. (Berry 2002).

Normal precautions in setting questions should be strictly bore in mind, such as avoiding double-barreled, loaded, and presuming questions (Newman 2000, Babbie 2004). Researcher must be particularly precarious in asking leading questions, as it will risk losing the rapport or even drive the interviewees to the direction of researchers' presupposition (Newman 2000). It is also important to run pilot interviews, estimate the time for administering the interviews, and tinker the wordings so as to suit the particulars of the study. (Peabody et al 1990)

Prompts form an integral part in qualitative interview. They are no less important in interviewing political elites. After formulating the semi-structured question set, researcher should anticipate at which point the need of follow-up questions would emerge, and write down the planned prompts in the interview protocol (Leech 2002). Sometimes, interviewers need to make improvised effort in prompting the targets to speak more or clarify something, for example, by making some short noise, simple indication, or just remaining silent.

Whether to record the interview is another issue that needs to be addressed. Researchers are often confronted with the dilemma of whether to use recorder. One can obtain a complete transcript by recording the interviews, and it is particularly

important if the researcher wants to use some exact quotations of his arguments. Also, it enables the researcher to fully concentrate on the conversation without being distracted by the additional task of note-jotting. However, the presence of a recorder can be rather obtrusive, and it may not be helpful in building up the rapport. Moreover, interviewees may be reluctant to speak freely and frankly if they know that all their words would be on record. In this way, answers provided by them may be guarded or mediated, the interview itself may lose its spontaneity. (Peabody et al 1990) At the end of the day, it is up to the researchers to choose.

After obtaining the information from interviews, researcher must deal with the issue of validity carefully. If the transcripts of interview are used for quantitative studies, the materials must be coded with careful attention to the issue of validity. Given the rich context of the materials, one can approach the materials by both manifest and latent codings (Newman 2000). For qualitative studies, researcher should check multiple sources to attain a higher degree of validity. The material should be analyzed with reference to the original conceptualization, while, instead of in a mere jumble of quotes, the outcome should be presented in a systematic way so that it can refine the framework of existing paradigm. (Kuhn 1962)

7.3 The Interviews

In this study, all the issues, problems and potential limitations mentioned above are taken to heart. The materials for this chapter come from a set of in-depth interviews with various principal officials, non-official members and one senior civil servant who are mostly involved in the POAS reform. The sampling frame is selected according to the roles they played during the reform as well as their potential power to influence the subsequent evolution of the system. Therefore, I have tried to invite all public officials, non-official ExCo members as well as relevant civil servants who may shape the final appearance of the system according to their conception.

Since these renowned political actors are widely sought in the community, the turnout rate is not satisfactory as expected. As a matter of practicality, it is also impossible for the researcher to interview all the principal officials or ExCo members who may have contributed significantly to the POAS reform. Fortunately, nevertheless, the researcher managed to secure the chance for interviews with the following political actors in Hong Kong, though attempts for further snowball sampling were proved failure. It is believed that high degree of representativeness of the targets has been attained.

The Sampling Frame:

Date	Interviewee	Titles
21 January 2004	Tam Yiu-chung	former ExCo member before the introduction of the POAS, Democratic Alliance for the Betterment of Hong Kong (DAB)
3 March 2004	Selina Chow Leung Suk-ye	Non-official ExCo member, Liberal Party (LP)
12 March 2004	Doris Ho Pui-ling	Administrative Assistant to Secretary for Constitutional Affairs (Responsible for the POAS reform)
12 March 2004	Stephen Lam Shui-lun	Secretary for the Constitutional Affairs
23 March 2004	Professor Lau Siu-Kai	Head of the Central Policy Unit
25 March 2004	Tsang Yok-shing	Non-official ExCo member (DAB)
26 March 2004	Cheng Yiu-tong	Non-official ExCo member, Federation of Trade Unions (FTU)
16 April 2004	Michael Suen Ming-yeung	Secretary for Housing, Planning and Lands (by-then Secretary for Constitutional Affairs when the POAS reform was initiated)
19 May 2004	Anonymity assumed	an Exco Members

Materials from the interviews form the basis of the analysis in this Chapter. They are conducted during the period of January to May 2004. These interviews last for an hour on average. All interviews were recorded and transcribed. And all the respondents have permitted the disclosure of their identity except one. After transcribing the interviews, the research also tried to identify internal contradictions within the answers. Answers from different political actors on the same issue will be compared to ensure consistency and consonance.

Similar set of semi-structured questions are addressed to each respondent, though the nature of in-depth interview mandates the researcher to modify the ordering and particular phrasing of questions in different circumstances. Since the phrasing is not drastically different, the validity of these questions as the tool to elicit the views from these elites should only be minimally affected.

Triangulation will be duly carried out, so that the first-hand interview materials can be verified and checked with the information gained with other sources. Whether the materials from the interviews reflect their true views and conception will be checked by documentary analysis on other speeches or interview reports of the same interviewees. This is to ensure the validity and ontological clarity of their articulation. Of course, political actors are often expected to be evasive and diplomatic in their answers, especially the ministers in offices at present. They may deliberately conceal

their real opinion on any issues and seriously affect the validity of the findings. This, in my view, is a limitation that cannot be completely overcome by any researcher.

A train of enquiry will be made after every interview, while all ideas, opinions or concepts raised in the conversation will be thoroughly studied and challenged. The ultimate aim of this relatively subjective perspective is to filter the truly important issues from extraneous ones, and interpret the data correctly. The propriety of the researchers' interpretation on the interview materials is also tested rigorously by the prevailing guidelines for qualitative research (see Mason, 2002).

7.4 POAS and the Conception of Political Accountability

The material extracted from these elites will be assessed according to the standard laid down in Chapter 2 and 3. From a normative perspective, any conception of true political accountability would consist the illustration of a balance between administrative expediency and answerability to the public. None of them should be privileged over the other. From an organizational perspective, the elites must be able to devise some form of principal-agent relationship with the general public that is conducive to provide account for political decisions and subject themselves to potential sanctions in order to claim to have a genuine vision of political accountability.

7.4.1 Defining Political Responsibility

The definition of political responsibility forms the underpinning of the operation of accountability system. It constitutes the scope and objects of accountability, determines what would the principal officials be accountable for, and would preponderantly influence the final organizational outlook of the POAS. It is therefore sensible to use this as the first focal point for elicitation.

A clear definition of political responsibility is determining to the successful operation of political accountability. Accountability ensures the answerability of public officials for their actions and behaviour (Jabbara and Dwivedi 1988). For actors who assume the political roles of the government, political responsibility provides the scope of duties of which they are answerable for (Uhr 1993) and to whom they should provide account to (Caiden 1988). Employing the idea of principal-agent model, political leader, in the capacity of agent, is empowered to carry out the political responsibility by the power entrusted by the principal. However, he has to accept accountability (answerability and entailing sanction) when things go wrong or policy initiatives is widely challenged or suspected (Uhr 1993).

The political elites in the POAS indeed espouse a rather clear and coherent vision of political responsibility. In sum, two elements have been especially emphasized by them.

The first element is the need to face sanction in case of policy failure. The best illustration has been given by Tsang Yok-shing. "Bearing political responsibility means that one needs to bear the final responsibility for the policy until it is successfully implemented. If this policy is proved to be undesirable or extremely faulty, that public official should bear the political responsibility. That means he should resign in extreme and serious situation." (Interview, March 2004)

The second element is the need for the principal officials to maintain confidence of the public. This point is unequivocally articulated by Lau Siu-kai. In his conception, political responsibility in normal situation means that "In case an action or decision made by a public official led to a drastic loss of public confidence on him, even the action is not that serious at all, he should consider whether to continue his office if the others do think so." (Interview, March 2004) Similar visions are indeed expressed by other interviewees. It is reasonable to conclude that, these two points are commonly shared among the political elites situated in the POAS. A fairly regular understanding of political responsibility has been reached.

However, these elites do not underestimate the difficulty in framing a clear definition of political responsibility. This leads Tsang to add a qualification to his definition. “However, politics does not like some precise quantitative science in a sense that no one can lay a ruler or standard. I believe people have a clear idea of political responsibility, but we cannot use a ruler to measure the severity of an incident and tell when reprimand or resignation is deserved” (Interview, March 2004). Lau further adds that, due to the inherent and inevitable ambiguity surrounding the concept of political responsibility, the ambit of responsibility can only be better defined in extreme cases or situations. Therefore, unless such cases arise, political responsibility is bound to be a “contested concept” (Interview, March 2004).

The informational aspects of accountability are also covered by Stephen Lam Shui-lun and Michael Suen Ming-yuen. Lam particularly advocates for a version of political responsibility which gravitates towards the deliberative or informational aspect. “Shouldering responsibility does not necessarily mean apology or resignation. For example, appearing the Question Time session in the LegCo, participating in motion debates and submitting the bills are also part of the responsibilities borne by us People tend to link the accountability system to the issue of who should make apology by bowing or shouldering the blame. To me, this is only a small part of it.” (Interview, March 2004)

7.4.2 Accountability Mechanisms

However, when it comes to the means to actualize their lofty vision of political responsibility, the articulation provided by these elites are no longer that consistent.

These elites show a discernable preference towards internal form of accountability over external one. Selina Chow Leung Shuk-yee, a legislative councilor elected from the wholesale functional constituency, quite rightly points out that “accountability can be institutional as well as attitudinal. Accountability can exist without the support of relevant institution.” (Interview, February 2002). This attitudinal aspect of accountability, or the willingness of assume political responsibility for personal misconduct or blunder under their policy portfolio, was nearly affirmed by all the principal officials at the advent of the POAS. (MingPao 2-7 July 2002)

For accountability to sustain representation and responsiveness, appropriate sanction and awards must be provided. The operation of internal accountability is completely at odds with traditional mode of accountability because it does not entail any external force to provide both sanction and incentive. Agents are held accountable even in “an unsupervised context” by the drive of internalized norms and ethics

instead of monitoring, and by one's own sense of professional guilt or malfeasance instead of potential threat of sanction (Romzek and Dubnick 1987).

However, the shortcoming of this approach lies in the lack of institutional guarantee. The attainment of accountability solely hinges on the goodwill of the political leaders. To foster voluntary subjection to accountability, a clear set of norms of accountability must be inculcated into and habitualized by the political actors. If the political leaders fail to do so, the public has indeed no institutional means to seek meaningful account and impose sanction as showed in Chapter 5.

Yet, some interviewees believe that indeed the concept of political responsibility and accountability is not so well entrenched among the public officials. Bureaucrats may not have the necessary consciousness to uphold internal accountability. Tsang Yok-shing ascribes this phenomenon to the bureaucratic background of most of the public officials. "More than half of the principal officials come from the bureaucracy. Tell the former bureaucrats to accept political accountability is somehow difficult. Originally, civil servants are politically neutral, including the senior officials who formulate important policies. They never have the concept of political accountability."

(Interview, March 2004). Under such conditions, it may be too optimistic to rely solely on the public officials' voluntary subjection to norms of accountability. Institutional arrangement still matters.

One obvious defect of the POAS is the unwillingness to institute a strong accountability relationship between the government and the citizens. This may find the root in two important features raised in the articulation of Stephen Lam and Doris Ho. First, they argue that only the Chief Executive has the authority to impose sanctions on the public officials. The cornerstone of such proposition is found in the Basic Law. "Appointment and removal of principal officials are proposed by the Chief Executive and determined by the Central Government. The power of the executive, legislature and judiciary is authorized by the Central Government. We should never deviate from the Basic Law." (Stephen Lam, Interview March 2004)

Second, they assert the importance of other institutional and non-institutional guarantees in Hong Kong constitutional system except full democracy. Doris Ho has made no pretension that the government has no intention to wait for full democracy before introducing the POAS (Interview March 2004). Stephen Lam reiterated the other software in achieving accountability. "Hong Kong enjoys the rule of law, freedom of the press and transparency of electoral and political systems. Checks and balances among different branches in Hong Kong are never inferior to those of other recognized democratic countries. They are quite effective and the government has indeed become more alert." (Interview, March 2004). This has somehow accorded with the reply from Donald Tsang Yam-kuen. In an occasion before the

implementation of the POAS, he emphasized the importance of the watchful mass media in ensuring accountability. “I admitted that citizens have no right to remove any ministers by electoral vote. However, they can have unreserved rights to phone to radio programs and speak whatever they think (about the ministers)”. (Apple Daily, 26 April 2002)

Being the major staff of the Bureau of Constitutional Affairs, it is reasonable to claim that their conceptions are indicative to the consensus on accountability mechanism shared by the ruling cabinet. Their lack of commitment to democratic institutions may explain why the reformers demonstrate such apathy in entrenching electoral scheme or horizontal accountability mechanism to uphold public accountability. The combination of these two above-mentioned features would indubitably be an attenuated form of accountability framework.

Indeed, no one would have expressed the deficiency of accountability as boldly as Lau Siu Kai. He frankly points out that there is never a constitutional, legal or conventional obligation for the government to be accountable to the public. “No matter what kinds of wrong, the constitution (the Basic Law) empowers neither the LegCo nor the citizens to seek accountability (from the Government). The LegCo and citizens cannot demand them (principal officials) to accept political responsibility and resign... The POAS eventually has to match with the special political environment

and constitutional arrangement of Hong Kong.” Responsiveness to the public demand for resignation is at best, according to Lau, a moral obligation (Interview, March 2004). Therefore, the duty to render account is thus applicable to the moral level only, and is again dependent on the voluntary subjection of political actors.

Lau also laid a trenchant criticism on the reckless use of the vote of no-confidence. “The Central Government is discontent with the proposal of vote of no-confidence in the LegCo. They think that LegCo always want to set up a political precedent which stipulates that if the LegCo does not like a particular official, it can demand his resignation. By the establishment of this precedent, the LegCo will usurp the power of the Central Government. It forms an informal path to demand resignation ...if you refuse, the government will face a crisis.” (Interview, March 2004)

Further, the political elites being interviewed went further to disapprove the use of social sanctions as the means to secure accountability. The illustration of Lau is particularly telling. “Many people in the opposition camp or even the mass media always keep the phrase “go down the stage” in their lips. If they continue such actions, I am afraid no one is willing to join the government (to pursue a political career). The lack of politically talented people will just further paralyze the government and deter those people who are interested in a political career.” (Interview, March 2004). Cheng

also states that we should not be too demanding. He even questioned the “propriety of trial by public opinion or society”. (Interview, March 2004)

To sum up, a huge mismatch was found between the vision articulated by these elites and the actual accountability mechanisms proposed to materialize the vision. These interviewees are generally conservative towards the use of external apparatus to seek account from the government, while social sanctions and vote of no-confidence are also explicitly disapproved. This may explain why the formal organizational structure of POAS is so deficient in bringing out true accountability, as these elites show such a lack of commitment towards external means of control.

7.4.3 Conflicts of Representation

The researcher also decided to study the issue of representation here. As illustrated in Chapter 2, in the discourse of accountability, we concern the question how the representatives should act in the best interest of the principals in the capacity of agents. The conception of representation held by these political elites is thus extremely reflective in indicating what kind of accountability relationship they intend to install with the society.

The conflict of representation is an even more pressing issue in this study because the POAS has created a jumble of political actors who come from different sectors, functional groups and political parties. The intriguing question is whether they would give advices about public policies with reference to sectoral interest or the public interest. It is thus believed that the analysis and comparison of their response on the issue of representation is extremely worthwhile. The inquiry turns out to be very edifying also.

The focus of this part is mainly on the three non-official members of the ExCo, Cheng Yiu-tong, Tsang Yok-shing and Selina Chow Leung Shuk-ye. All of them think that Tung Chee-hwa invited them to join the ExCo because of their particular backgrounds and bases of support. In declaring his reluctance to join the ExCo, Cheng has indeed laid some hints on the fact that sectoral interest is the main criteria for invitation. “Tung (the CE) said that if I did not promise (to join the ExCo), he will no longer to find people in the labour sector and would not find Tam Yiu-chung (the former ExCo member who shares labour background) either ... if I do not accept the invitation, there will be no representative in the ExCo from the labour groups. If it is really the outcome, don't I become the ultimate sinister (千古罪人)?” (Interview, March 2004)

It can be seen that the composition of the non-official members are intended to strive for a balance among the societal sectors. They were appointed mainly because of their sectoral background. The ExCo is thus a combination of representatives from major sectors instead of politicians that can gain cross-sectional appeal. The dominant role of sectoral backgrounds in making the invitations may explain why these non-official members expressed drastically divergent views on their roles in the ExCo as well as the group interests they vow to represent.

The answer from Cheng Yiu-tong is particularly suggestive here. Being the Chairman of the FTU, a major pro-government labour organization in Hong Kong, he made no reservation that he will fight for labour interest in the ExCo. “Be frank, there is only one member who come from labour group in the ExCo. Naturally, I will stand on the ground of labour groups. Secondly, ...I told Mr. Tung that I do not believe in the idea of “ruling coalition” and its existence. Frankly speaking, when I joined the ExCo, the first reduction of civil servants’ salary was passed. From the point of view of labour organization, I must oppose the reduction.” (Interview, March 2004)

Cheng’s later answer also reveals the feebleness of the idea of collective responsibility. In recalling the proposal to reduce the price of the “Green Taxi”, he said “putting myself in the shoes of those taxi-drivers, I must oppose such proposal. Therefore, when such proposal was discussed in the ExCo I urged Dr Sarah Liao not

to push it forward... one principal official asked whether the taxi drivers of FTU would launch a strike. My answer is that I won't initiate a strike. However, if there is one, I would surely participate." (Interview, March 2004). Protection of the labour interest is Cheng's guiding principle in giving advice and decides on public policy in the POAS.

Selina Chow provides a relatively modest account on representation. In contrast to Cheng, she repeatedly reiterated the importance of "collective interest" over sectoral interest in giving policy advices to the government. However, she also conceded that because of her affiliation with the Liberal Party, a pro-business and conservative political party in Hong Kong, she will somehow base her judgement on the viewpoint of the LP. "I am I. I cannot say something that is not spoken by members from LP". "Although I join the ExCo in my personal capacity..... I hope to bring the voice of LP and the LegCo into the ExCo" (Interview, February 2004).

The case of Tsang Yok-shing demonstrates another kind of conflict of representation. Before his resignation as the Chairman of the DAB, the government may finally push forward policies that are opposed by the DAB. Because of the constraint of collective responsibility, he was bound to vote for a bill which was rejected by the party he led. Football gambling and border departure tax are the examples provided by him.

Tsang tried to resolve these conflicts by making appropriate compromise with the government before a bill is introduced. "I hope to discuss with Mr. Tung about the method of policy formulation in order to minimize these kinds of conflicts... I hope that most of the conflicts can be resolved this way, so that DAB will support nearly every bill of the government. However, I already told Mr. Tung that I cannot ensure every DAB LegCo members will unconditionally support the government."

Tam Yiu-chung, a former ExCo member prior to the introduction of the POAS, rightly pinpointed this problem. "The non-official members...can only serve as supporting role. They do not need to promote and explain policy initiatives. The situation is more interesting for leaders of political parties. In giving comments about government policies, the identities of James Tien (leader of the LP) and Tsang Yok-shing are rather obscure. The public cannot recognize if he speaks for the parties or the ExCo. This dilemma is particularly great for leaders of political parties.

Therefore, we witness one important and interesting phenomenon. When situated in a position where one can exercise the policy machine, the scope of representation of these non-official members is indeed rather constricted. Group interests prevail, in my opinion, largely because of the conducive environment for a corporatist-like political system (Kuan 1999). Even leaders of political parties cannot widen the scope of representation of the ExCo because of the restriction on non-official members as

shown by Tam Yiu-chung. Such arrangement is inimical to both party development and the channeling of wide public or cross-sectional concerns into the policy formulating process.

Similar question is addressed to the new principal officials. Both Stephen Lam and Michael Suen replied that they would uphold the overall interest of Hong Kong in formulating the policies of their bureaus. Moreover, Suen added that traditional training of the civil service is influential in this aspect. He reiterated the desirability of such training in the maintenance of public interest. "The advantage of the training of civil service is that it emphasizes on consensus forging and balance of different interests. Political parties can of course transcend narrow sectoral or group interest. However, (unlike civil servants) they still have to concern about the support of voters." (Suen, Interview April 2004)

As a side point, Suen also admitted that the Exco members are not so united in terms of political ideologies as well as representation. "We come together in Exco not because of the same political creed. We become colleagues merely because the CE appointed us. It is hard for us to be united in all issues." (Suen, Interview April 2004)

It is difficult to regard the Exco as a governing cabinet with homogenous political beliefs as well as similar representation.

The picture of constricted representation has also somehow enhanced the persuasiveness of the claim that the institutional framework laid by the Basic Law indeed renders the government more vulnerable to the intervention to promote sectoral or functional interest through some covert forms of corporatism. The dominance of sectoral interest can also be regarded as a miniature of political quandary encountered by Hong Kong during the post-colonial era. The views of these 3 out of 5 non-official members should have provided a solid foundation for making such generalization. The POAS would at best be a twisted principal-agent framework, in which only particular sector would be able to exert pressure for accountability in current structure. The “public accountability” is only available for a restrictive “public”. Eventually, the representatives appear to be unable to transcend the confines of sectoral wellbeing and extend their representation to the general public. This is extremely unfavorable for the ExCo to forge a strong accountability linkage with the citizens.

7.4.4 Criteria of Assessment

Another good way to elicit the conception of accountability held by these elites is to ask them to assess the performance of the POAS. The enquiry does provide some

interesting hints and observation on their priority of different criteria in judging the situation.

The most important discovery of such inquiry is that political elites in the POAS often attach **huge instrumental concern** in their assessment of the new reform. A preponderant emphasize has been placed on **whether the POAS can enhance the efficiency of public governance and ensure a strong government**. The concern about whether true accountability is achieved is glaringly absent from their assessment. No trace of the delicate balance mentioned in Chapter 2 can be found in their illustrations. This largely accords to the observation on how pro-government elites articulated the concept of accountability and shaped the political struggle with the democrats during every incident of accountability in Chapter 6. The political confrontation concerning the norms of accountability can partly be traced to this mindset.

Such efficiency vision can be broken down into several threads. First, in evaluating the whole reform, most of these actors automatically focused on the lack of political support to the layer of political appointees in the system. Tsang and Cheng stressed the problem that political accountability and responsibility are only shouldered by the CE and the 14 principal officials. “You have given him (principal official) so great power. However, can he fully determine the policy direction? Does

he have the power to employ the manpower? ... If I need to bear political responsibility, the officials below me should also share some of it.” (Cheng, Interview, March 2004). As we can see, strengthening the executive-led arrangement is their main concern, a verification of the claim raised in Chapter 6.

Second, they regard whether the POAS reform can strengthen the support from the LegCo as another important criteria of assessment. The representative from the Bureau of Constitutional Affairs considers the lack of majority support in the LegCo as the major problem of the POAS. “Now many principal officials think that selling policy in the LegCo is difficult because they do not have a single vote in it. DAB and LP cannot be regarded as partners in the ruling coalition. This can be reflected from the fact that they do not support the government all the time. Besides the POAS, the executive-legislative relationship poses a more formidable problem to us.” (Doris Ho, Interview, March 2004). The craving for legislative support sufficiently explains why the reformers introduced some kind of coalition politics and the cooptation of two leaders from local political parties in the ExCo.

Third, the lack of team spirit and solidarity among the members of the ruling coalition is frequently raised in their assessment as well. The crucial issue, as Tsang pointed out, is how to keep these people from different background together to work as a team. Due to the lack of party politics, the only common ground for them to be

united is their aspiration to serve Hong Kong. To Tsang, this is absolutely insufficient. (Interview, March 2004). Cheng also affirmed this view (Interview, March 2004). Again, this is from the perspective of efficiency concern.

Fourth, they would assess the POAS by whether the principal officials gain significant supports from the civil service. This criterion led many interviewees to criticize the fact that the principal officials have no control over the appointment of the staff under their deployment. The suggestion to extend the network of political appointment to two or three more tiers is incessantly proposed during the interviews. (Doris Ho, Tsang, Tam, Cheng, Interview March 2004) Michael Suen even considered this as the major barrier for the maturing of the POAS. (Suen, Interview April 2004)

Doris Ho and Tsang both pointed out that the principal officials have no time to deal with political work. “Their time are always encroached by office work ... these officials are not lazy. They just pay too much time in their office. They have no time to go out and meet the citizens. Another factor is that these officials are specialized in paperwork but not these sorts of political shows. If we combine these two factors, we can discover that actually their working style is not greatly different from that of bureaucratic governance. They do not have the charismatic quality of politicians.” (Tsang, Interview 2004) Michael Suen affirmed such view from his own experience.

He admitted that there was no big difference between being a principal officials and a senior official before the introduction of the POAS. “Actually, after the POAS is implemented, principal officials should only be expected to tackle political works. But now...we have to handle administrative tasks, too.” (Suen, Interview April 2004)

Doris Ho further added that officials who came from outside the government needed much time to adapt to the new working environment. “The first and a half year of the implementation of the POAS is just the adaptation period. These principal officials need to tinker the mode of cooperation with their subordinates. It is hard for them to take care of so many tasks.” (Interview, March 2004).

All political elites affirmed the merit of this reform. They showed their approval because the POAS has put the development of Hong Kong politics in a correct direction. It has preserved the political neutrality of the civil service, while created a layer of political appointees who can devote their energy in political lobbying and policy formulation. Michael Suen stated it clearly also that introducing mechanism for the CE to remove particular ministers from office is only for eliminating the public pressure on the government to sack him/her, so that smooth governance can be preserved. None of them conceded public criticism of the system as a retrogression of political accountability. Overall, it is rather clear that the interviewees perceive the

ministerization under the POAS as a reform to solve the gridlock in governance instead of an answer to the public calls for more political accountability.

7.5 Conclusions

We should resist the temptation to make overly broad and general conclusions on the political conception of these elites only by a few in-depth interviews. However, their responses and some astonishing answers do indeed provide us with some clues to study their conception of roles and articulation of ideas.

From a normative perspective, the instrumental concern was found to be dominant in the elites' appreciation of the whole POAS reform. They do not pay due consideration to the needs of public participation, responsiveness and answerability, let alone the balance between discretion and control that pertains to the operation of political accountability. The attachment of an efficient vision to the accountability system may be an indication that public officials do not truly regard political accountability and control as a normative value in public governance.

From an organizational perspective, although the elites share a clear vision of political responsibility, the organizational framework to materialize their aspiration proposed by them is, at best, an attenuated form of accountability mechanism. What

they preached cannot be met by what they proposed. Political accountability cannot be truly meaningful in Hong Kong if such mismatch between vision and action is left unsolved. It may explain why political accountability is reduced to mere rhetoric and ethos in the actual operation of the POAS, and why the government still remains uncommitted to more fundamental political reform in spite of the escalating public sentiments for such reform.

The weak accountability relation is further exacerbated by the characteristics of constricted representation in the network of co-optation in the ExCo. The reason to co-opt political elites from pro-government and business sector and to marginalize the democrats can be ascribed to various factors as discussed in Chapter 5 and 6. Such arrangement would fail to aggregate the diverse pocket of interests in society. The implication of such co-optation, as deduced from the materials from the interviews, is that conflicts between different sectors may only be heightened instead of relented. It lacks the representatives from cross-sectional background which can act as strong intermediaries to solve the increasing confrontation along the frontline of socio-economic orientations and political ideologies.

When both the normative and organizational conceptions held by the political actors in the power center do not possess the necessary components of political accountability, it is surely naive to hope that accountability practice can be derived

from the transformation led by elites who have different perception in mind.

Chapter 8 Conclusions: Accountability System without Substance, Spirit and Opportunity to Maturate

8.1 “Accountability Without Democracy”? Or Something More?

Civic Exchange, a policy think-tank in Hong Kong, once commented the POAS by the phrase “accountability without democracy” (Civic Exchange, September 2002). Local academic and political communities often summarize the problems of this reform by this succinct phrase by then. It is commonly believed that meaningful public accountability must be underpinned by democratic institutions, by which citizens can impose sanctions, demand ministerial resignations and, in the ultimate cases, oust the principal officials by elections. Political accountability would be merely a utopia without full democracy.

While this belief cannot be agreed with more, it is submitted that something more is missing for a meaningful intellectual enquiry on the POAS reform. It is not hard to find analysts who were willing to point out that the POAS framework deviates greatly from the standard set by contemporary democratic accountability institutions. However, as this thesis hopes to demonstrate, solely focusing on institutional analysis

would lead to the neglect towards the importance of political dynamics and the conception of accountability held by political elites in contributing the ultimate calamity of the new accountability system. No single approach can alone enable us to grasp the intricacy of the politics of political accountability as prompted by this governmental reform.

Driven by this conviction, this thesis serves as an ambitious attempt to overcome the inadequacy of the local academic discourse on political accountability and the POAS, which is mainly centred on pure institutional analysis. It deliberately adopts multiple perspectives in approaching the POAS reform, so that a more comprehensive picture on its pros and cons can be presented to the readers. Particularly, this thesis addresses to the inadequacy of the existing literature in appreciating the essence of the concept political accountability as to manage the tensions between administrative rationality and popular control on the government.

8.2 Politics of Political Accountability – the Wilder Context

To attain a more insightful analysis on the POAS, researcher must be able to put this reform in the broader context of political development in Hong Kong. It should be always reminded that the development of political accountability is firmly chained

in two conflicting trends of Hong Kong whose origins can be traced back to Sino-British negotiation during the colonial era.

One salient trend is the preservation of depoliticized and efficient executive-led governance, which is largely a heritage of the benevolent authoritarianism during the colonial era. From a positive side, it is some kind of top-down paternalistic rule which is buttressed by the good wish of the public officials. The senior bureaucrats or political elites voluntarily bore the responsibility to protect public interest in the absence of external control or scrutiny. Their willingness to be responsible to the public sprang solely from their elites' vocation to serve or professionalism instilled by the civil service. However, the inevitable side effect is the insufficiency of external control in public governance. The administrative state led by civil service resembles some kind of guardianship or elitist rule, while political participation from the public was greatly limited in both the policy formulation process and formation of the government.

While the Mainland government worried that a hasty democratization in Hong Kong would destroy the stability hardly attained in the past decade, the resumption of sovereignty to China also triggered the issue of maintaining the confidence of the Hong Kong people. Therefore, the avoidance of great democratic reform and the need to maintain the status quo, including the efficient executive-led governance in Hong

Kong (under the suit of soft authoritarianism), remains a high imperative both before and after the Handover.

On the other hand, the bottom-up urge for a participatory style of politics is gathering momentum. The enactment of various legislations on human rights and the incorporation of relevant international conventions in the Basic Law turned the post-colonial political system into liberty- and right-based one. The guarantee of democracy in the Basic Law is taken into heart by the public. The introduction of indirect and later direct election before the Handover gradually awakened the political awareness of the issue of representation and responsiveness of the general public. The increasingly vigilant mass media enhances the transparency and openness of the public governance. The civil service reform towards the greater administrative responsibility also strengthened the sense of accountability of the colonial administration. The intrusion of these democratic elements in the soft authoritarian political framework influenced significantly to the constitutional making process during the early nineties, and its impact further amplifies in Hong Kong politics after the colonial rule.

While the literature on colonial politics is mainly centred on political stability and transition, the academic discourse on the post-colonial Hong Kong politics is primarily about political instability. A main source of instability is, put in the simplest

terms, the struggle between the want to maintain the traditional elitist politics and the strong public urge for participatory politics. Quite clearly the depoliticized political framework, which is adopted from the colonial government, cannot solve these unprecedented political conflicts. Thus, the CE could not exert strong leadership over the civil service, while the legitimacy of the government was also put into serious doubt. In order to solve the dual problem of both capacity and legitimacy, the government encountered the ultimate puzzle in the next step of constitutional reform – how to centralize political power to enhance the efficiency of governance though, at the same time, respond to the conflicting demand for more democratic control over the government from the public ?

The birth of the POAS would therefore make sense if it is situated in such political backdrop. The project to ministerialize and politicize of the framework of administrative state can be readily perceived as a step to both strengthen executive leadership and somehow relent the public pressure for democratic accountability. Principal officials are now in a better position to deploy resources and carry out political tasks and lobbying. The POAS imposes new responsibility on the new layer of political appointees, but does not strengthen the external means to impose sanctions such as electoral reform or empowerment of the legislature. In short, ministerialization can be regarded as the surrogate of full democracy.

8.3 The POAS: Accountability System without Substance and Spirit

The institutional content of the POAS is thus extremely critical to the development of Hong Kong politics, as it would construct a new “strategic field” in which political deliberation, interaction and struggles are positioned. No doubt the POAS has brought significant change in both the public administration and the political ecology in Hong Kong. However, as this thesis tries hard to indicate, the desire to assert executive dominance pervades the whole POAS restructuring, while the reformers have paid little attention to craft a structural context by which the government can institute a true accountability relationship with both the public and the legislature. As Chapter 5 shows, ministerialization alone cannot enhance government transparency, answerability as well as the possibility of being sanctioned, while the political neutrality of the civil service was also somehow jeopardized. Such “structural deficit” renders the whole POAS reform obsolete in matching the public expectation for more transparent governance and accountable government at the outset. Moreover, it has deepened the nature of personal rule, failed to introduce some kind of collective responsibility in the cabinet as well as provided a permanent

support base for the government in the existing minimally-integrated political system.

Worst still, the system did not provide even slightest institutional guidance for political actors to deal with foreseeable incidents related to the issue of accountability.

The changes of political system in Hong Kong are often driven by political elites. The POAS is of no exception. This thesis devotes significant coverage in studying in-depth indeed how the relevant actors perceives the concept of political accountability and the entailing organizational attributes. The inquiry indicates that although they have a rather clear concept of political accountability, the concern of efficiency in public administration dominates their conception of accountability, and hence the appreciation of the POAS reform. The principal officials emphasize the internal control and professionalism as the important means to achieve accountability and play down the importance of external democratic means (such as electoral sanctions) in this regard. In the same vein, close political allies in the ExCo do not require broad public support to gain their positions, they are not structurally compelled to transcend sectoral interest and pay heed to the preference beyond their electorate or function groups. Such “constricted representation” may account for their higher regard for sectoral interest over the public voice as exhibited during the interviews.

These two observations lead this thesis to conclude that the new accountability system is devoid of both substance and spirit of true public accountability.

8.4 Politics of Accountability – Accountability System without the Opportunity to Maturate

The subsequent politics of political accountability was largely shaped by the opposite camps of players – the ExCo together with the pro-government legislators on one side, and the democrats on the other. The political conception and values held by them perform a significant role in shaping the pattern of new political dynamism. Because of the lack of guidance provided by the POAS, in every situation when issues of accountability arise, the interaction between players of these two camps play a dominant role in shaping the subsequent norms of accountability. The formation of such norms has to resort to the sheer power politics which is conditioned in the executive-legislative relationship and the state-civil society relationship.

As illustrated in Chapter 6, the politics of political accountability is locked in the developmental pathways which have been long ditched during the colonial era. The structural divide between elitist and mass politics and ideological confrontation between pro-government and pro-democracy camp has been entrenched and

reinforced progressively in tandem with the zigzag advances of democratization in Hong Kong. The struggle over the norms of political accountability is essentially a manifestation of such headlong clashes.

The pattern of vested interest induces the pro-government and pro-democracy camp to play the “game” of political accountability by drastically different ideologies and approaches. The incongruity between the efficiency concern of the pro-government camp and populist vision of accountability held by the democrats led to never-ending conflicts in a series of subsequent political incidents, and the adversarial coalition politics introduced by the POAS further restrict the room for mediation. Public pressure continued to accumulate. It further increased the incentive for the democrats to manipulate public sentiments in the struggle and, consequently, the imperative for pro-government camp to harden the defensive walls. The dynamics would be incessantly channeled back to strengthen the rift between two camps, and the politics of political accountability was thus subject to increasing return.

Before the unprecedented July 1 demonstration in 2003, the pro-government coalition triumphed in nearly every battle concerning political accountability. Their high regard for efficiency in governance could overwhelm over the public concern for accountability since the democrats were politically marginalized within the legislature. However, after the outburst of public sentiments in the demonstration, the civil

society becomes much more active in protesting against the defensive stance of the government.

Thus, I would like to use the two top-level resignation after the July 1 demonstration and aftermath of SARS investigation as an illuminating epilogue to our discussion.

Two weeks after the march on July 1, the government announced the resignations of Secretary of Security Regina Ip Lau Suk-uee and Financial Secretary Antony Leung Kam-chung. While Chief Executive Tung Chee-hwa floundering under huge public pressure, the resignations came as a timely rescue. Although both Regina Ip and Antony Leung claimed that their resignations were prompted by personal reasons, the unrelenting public discontent must have contributed considerably to their decisions. Hong Kong had long expected Mrs Ip to resign for her mishandling of public sentiment, distortion of public opinion and her unreasonable belligerence in the saga of Article 23 Legislation. The public called for the exit of Mr Leung for his apparent personal misconduct. Top-level resignation was indeed a very uncommon phenomenon in the old bureaucratic rule in which civil servants can evade political responsibility under the misleading label of “political neutrality”. Obviously, their departure helped the development of accountability in Hong Kong and they would mark the start of accountability practices if Tung is determined to entrench them.

Yet, the aftermath of SARS investigation showed an worrying trend of development of accountability in Hong Kong. The inquiry panel of the LegCo produced their SARS report pm 5 July 2004, putting the blame of the sloppiness of dealing with SARS on Yeoh and Margaret Chan. However, the panel did not suggest any punishment to the officials at fault. It somehow concurs with the conclusions of another SARS Experts Report which opines that the administrative faults exhibited are not as serious as to necessitate ministerial resignation. Yeoh offered apology afterwards, but refused to resign.

However, the report triggered dismay and grievance among the already disgruntled victims of the SARS outbreak. They sternly criticized the leniency of the report and condemned the relevant officials for their unwillingness to step down through the mass media. Their complaints earned extensive front-page coverage in nearly all local newspaper in the next day. The comment from a resident of the Amoy Gardens Block E who still suffers from the grievance of the death of his wife after giving birth to their son is particularly striking. "It is like a show to me. And I have finally learned from Dr Yeoh the meaning of the word shameless" (South China Morning Post, 7 July 2004).

Immediately, the government was besieged by the sudden upsurge of public sorrow as well as anger. The pressure was directed to both Yeoh and Leong Che-hung.

The pro-government legislators also did not stand by Yeoh in this time. Quite rarely did both the DAB and the Hong Kong Progressive Alliance (HKPA), the two stalwart pro-government parties, would be in line with the DP's motion in urging for Yeoh's resignation. Although LP did not intend to agree with the DP's motion, they did not intend to protect Yeoh as well. Eventually, Yeoh announced his resignation two days after the release of the report and became the first principal official who stepped down for shouldering political responsibility.

Obviously, Yeoh's resignation was solely effected by the unexpected deluge of public pressure, and it was not based on any culpability attributed to him in the SARS report from the LegCo. His bowing out was solely effected by the unexpected deluge of public pressure. With the help of the opportunistic behaviour of pro-government legislators, public sentiment eventually earned the dominating role in determining the norms of political accountability. However, it was quite obvious that all the professional judgment and conclusion raised in the SARS reports were all neglected by politicians in reaching the decision to urge for Yeoh's resignation.

Accountability is supposed to be a neat balance between executive autonomy and responsiveness to the public. However, such balance could not work out in Hong Kong. The operation of the political accountability system in Hong Kong has moved from one extreme to another extreme in the politics of SARS enquiry - unreasonable

conservatism has given way to complete adherence to populist demand. Its potential side effect would be the adoption of public sentiment as the only factor in determining how future incident of accountability should be resolved. Neither gravitating towards these two extremes would facilitate the evolution of convention of political accountability and the healthy development of the POAS. Indeed, there is a better way to comply with the spirit of political accountability and strive for a better balance in this case. Dr Yeoh could offer a resignation which took effect after a short period, so that he could be given enough time to kick-start the reform which improve the preventive measures of public healthcare system against SARS. Unfortunately, the political tussle and altercations close all the potential room for deliberation and meaningful dialectical interaction now for improving the whole system and filling up the proper institutional void.

In sum, this thesis does not intend to negate the merit of the whole reform. Indeed, ministerialization of the colonial bureaucratic structure is an important and necessary step in developing political accountability in Hong Kong. The obvious change under the new POAS is that principal officials will now be less insulated to great pressure to resign in case of political misjudgment and grave personal misconduct. Yet, in order to effect genuine political accountability (in both normative and structural sense), the existing ministerialization project must go in tandem with

other fundamental political and administrative reforms, which would be inevitably linked with democratization.

Hong Kong will fall short of full democratization at least in the near future due to the existing constitutional impediments and political opposition by Beijing and local conservative forces. Given existing political environment in Hong Kong, a realistic and workable blueprint for improving the accountability system must be on administrative instead of political reform. Indeed, there is a great room for reform in the civil service even under the constraint of democratization. The experience of OCED countries is particularly telling here. To put it briefly, as learned from the experience of OCED countries, when the civil service lags behind the development of the civil society and cannot respond effectively to the public demand, the bureaucracy would be under huge pressure and public expectation for a fundamental structural reform as well as a paradigmatic changes in value of governance. The restructuring normally works by facilitating the exchange of information, fostering consensus building with the civil society and finally institutionalizing public participation in the policy deliberation and making process. Once the stakeholders and general public are regarded as working partners with the government in the policy process, informational and explanatory accountability of the public administration will be significantly

enhanced. Doubtless to say, HKSAR government can work better in the three areas mentioned above.

Here comes the final remark. The politics of political accountability in Hong Kong is actually politics of interpretation. The dynamics was formed by the political interaction and struggles between two structurally separate camps, whose political behaviours are driven by distinct sets of ideologies, values as well as mode of political participation. In my opinion, such visualization would be the starting point in forming the new theoretical framework or even academic paradigm which can better analyze the political instability of post-colonial Hong Kong.

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